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THE SCHOLARLY RESPONSIBILITY OF AN INDEPENDENT HISTORICAL SOCIETY

By WALTER MUIR WHITEHILL

IN the Boston business district, at the corner of School and Washington Streets, there has stood for nearly two hundred and fifty years an ancient red brick house with a gambrel roof. It was built, soon after a great fire of 2 October 1711 that levelled the center of the town, by Thomas Crease, an apothecary, on land owned in the sixteen thirties by Anne Hutchison's husband William. Occupied as a dwelling house for more than a hundred years, it acquired literary connotations during the nineteenth century as the place of business of the publishers Ticknor and Fields, and as the Old Corner Book Store. Ninety years ago Mayor Nathaniel B. Shurtleff expressed the hope that this ancient landmark " will be allowed to remain, for many

years to come, standing in its present form." It was, through many changes in the region, allowed to remain, but with a minimum of affection and respect. After the owners of the Old Corner Book Store moved their business elsewhere in 1903, the building fell to less appropriate uses. Of recent years it has been almost concealed from view by a vast billboard and a variety of gaudy signs affixed by its modern tenants. A passer-by would be more aware that pizza was to be had within for fifteen cents than that he was in the presence of one of the oldest buildings in Boston, the resort a century ago of the greatest New England literary figures.

Last autumn there arose a strong probability that the building would soon be purchased for demolition because of the value of its site. The owner, who had bought the property a few years before as a real estate investment, wished to sell before the end of the year. Although time was extremely short, Mr. John Codman, Chairman of the Beacon Hill Architectural Commission, organized an Old Corner Committee which secured an option for the purchase of the property, requiring an equity payment of $50,000. The Mayor of Boston promised an abatement of taxes to a figure calculated to allow rents to cover all running expenses, mortgage requirements and taxes, on certain conditions. These were that title be taken by a nonprofit organization; that deed restrictions be placed on the property designed to insure its preservation and gradual restoration to its 1850 exterior appearance; that the Committee demonstrate real effort to improve the property as rapidly as possible; and that realistic rents be charged all tenants to whom space in the building might be rented.

To meet the requirement of a nonprofit organization Historic Boston, Inc. was created on 25 October 1960, with the broad purpose of preserving significant buildings, finding appropriate uses for them, commercial or otherwise, and if possible keeping them on the tax roll so that they may continue to be tangible as well as intangible assets to the City of Boston. A public announcement of the effort to save the building was made on 14 November. There was no time to plan a conventional campaign; no sense, in view of the Christmas mails, in attempting wide circularization. Yet through magnificent cooperation of the press and personal solicitation by devoted

friends, it proved possible before the end of December to raise more than the $50,000 required for the equity payment. Historic Boston, Inc., received its charter from the Commonwealth of Massachusetts on 29 December and took title to the building the following day.

Much still remains to be done, but the building is now in safe hands and its preservation is assured. The most significant part of the venture was the wide response, not only in Boston but in many distant parts of the country, from donors, large and small, once the need became known. It was heartening to discover how many hitherto unknown friends genuinely cared for the building and what it represented in the historical continuity of Boston. Many of those were reached by comparative photographs generously published by Boston and New York newspapers of the building as it is today and as it had been in the past and should be in the future.

My pleasure in this generous response to pressing needs in historic preservation was in no way diminished by reflecting how much easier it apparently is to gain needed support for a building, for something that shows and that can be seen, than for the acquisition and preservation of historical sources, like the Latrobe papers, that do not show. Yet this last is the problem of every privately supported historical society in the country that maintains a library and manuscript collection.

Certain things, like historic buildings, paintings, and handsome museum objects, are susceptible of dramatic effect. These readily attract attention, and, by the use of photographs, tell their own story. Yet the affairs of the mind are seldom adapted to spectacular presentation, either in the succinctness of the press release or the breathless excitement of the radio announcer who frightens his audience by magnifying the force of an approaching hurricane or political crisis. During the Christmas holidays each year an extraordinary number of serious communications, representing long research and deep thought, are presented at the meetings of the American Historical Association, the American Association for the Advancement of Science, and other learned societies, yet the few of these that are reported in the daily press are tricked out with headlines that are as misleading and foolish as those that sometimes adorn the accounts of Sunday's sermons at a time when murders and political scandals are scarce.

The doings of libraries are even less susceptible of dramatic presentation than the results of teaching and research, for a library exists to satisfy the unpredictable wants of an amorphous body of readers, present and future, and a librarian seldom knows anything of the effect that the books and manuscripts committed to his charge have upon those who read them. Grateful words are often spoken and acknowledgments included in prefaces, but there is no means known to man of measuring the true effect of a library's work.

Now the heart of a historical society is its library, without which it has little reason for existence, yet this heart is often less noticed, less appreciated by the world in general, than some of a society's peripheral occupations. In 1791, the year of its foundation, the Massachusetts Historical Society—the first to be established in the United States—issued a circular letter which began:

A Society has lately been instituted in this town, called the Historical Society; the professed design of which is to collect, preserve and communicate, materials for a complete history of this country, and accounts of all valuable efforts of human ingenuity and industry, from the beginning of its settlement. In pursuance of this plan, they have already amassed a large quantity of books, pamphlets and manuscripts; and are still in search of more; a catalogue of which will be printed for the informtion of the public.

The Reverend Jeremy Belknap, founder of the society, expressed a principle of general application and of the highest importance when he wrote to his friend Ebenezer Hazard: [1]

We intend to be an *active*, not a *passive*, literary body; not to be waiting, like a bed of oysters, for the tide (of communication) to flow in upon us, but to *seek* and *find*, to *preserve* and *communicate* literary intelligence, especially in the historical way.

Again in 1795, in anticipation of scrounging documents from John Hancock and Samuel Adams, Belknap wrote to Hazard: [2]

There is nothing like having a *good repository*, and keeping a *good lookout*, not waiting at home for things to fall into the lap, but prowling about like a wolf for the prey.

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[1] Massachusetts Historical Society, *Collections*, 5th ser., III, 245.
[2] *Ibid.*, pp. 356-357.

The New-York Historical Society, the next to be founded, less than three months after its organization in 1804 issued an address "To the Public" indicating the types of material desired for its library, and furnishing the timeless apologia for such collecting in this succinct phrase:

> . . . for without the aid of original records and authentic documents, history will be nothing more than a well-combined series of ingenious conjectures and amusing fables.

The American Antiquarian Society, established at Worcester, Massachusetts, by the scholar-printer Isaiah Thomas, in 1812 similarly undertook the collection of printed and manuscript sources for its library.

During the first half of the nineteenth century, societies with like aspirations and purposes sprang up in many states. These were voluntary associations of private individuals—usually merchants, lawyers, doctors, and clergymen—who banded together for the common good. Their support came almost entirely from private sources, and they ordinarily had no formal connection with colleges or other institutions of learning. For it must be remembered that until the last decades of the nineteenth century, as the authors of the *Harvard Guide to American History* point out, "history had not been a profession, but the avocation of gentlemanly scholars and litterateurs; only a few, beginning with Jared Sparks, had ever taught the subject in universities." [3] Their interests were originally directed to the public and political aspects of the growth of the nation, rather than to the details of daily life. Their emphasis was more upon the ideas or principles that a given founding father contributed to the formation of the Republic than upon the style of house in which he lived, the clothes he wore, or the china or crockery from which he ate his victuals. Along the Atlantic seaboard, privately supported historical societies that have survived to the present were organized in the eighteen twenties in Maine, Rhode Island, New Hampshire, and Pennsylvania; in the thirties in Virginia, Vermont, Connecticut, and Georgia; in the forties in Maryland and New Jersey; in the fifties in South Carolina.

[3] Oscar Handlin, *et. al. Harvard Guide to American History* (Cambridge, 1955), p. 5.

The success, or even the continued existence, of such an organization presupposes a certain degree of established prosperity—a situation where life has advanced to a point that permits some leisure for literary and historical occupations. Thus some of the historical societies chartered at the same period west of the Alleghanies proved to be impermanent.

In the second half of the nineteenth century, largely because of the precedent set in Wisconsin through the energetic activities of Lyman Copeland Draper, secretary of the State Historical Society of Wisconsin from 1854 to 1866, state legislatures began to provide consistent and sometimes generous support for historical societies. The precedent and pattern of Wisconsin was gradually emulated throughout the middle and far west. Although this century-old tradition of legislative support has become generally accepted in at least two thirds of the states, a fair number of historical societies still operate entirely upon privately given funds. These are chiefly along the Atlantic seaboard, although in certain large and prosperous cities elsewhere, such as Cleveland, Cincinnati, Louisville, Chicago, St. Louis, and San Francisco, there are privately supported societies whose libraries contain books and manuscripts of high scholarly usefulness that are of more than regional significance.

Only within recent months has there become available a comprehensive and reliable guide to the manuscript holdings of institutions throughout the United States. The National Historical Publications Commission, since its reorganization in 1950, has performed many services to learning; its latest and most welcome one is *A Guide to Archives and Manuscripts in the United States*, edited by Philip M. Hamer, Executive Director of the Commission, that was published in January 1961 by the Yale University Press. This, like Virgil's appearance to Dante in the *selva oscura*, will lead many a perplexed wanderer through the maze of institutions that possess manuscripts today.

The 775 pages of the *Guide* are full of surprises. How otherwise would one learn that a medieval cartulary of Ipswich Abbey is in the Lexington [Kentucky] Public Library, or notarial records of the monastery of San Lorenzo, Venice, 1478-1520, in the Public Library of Davenport, Iowa? And how would any one in need of Italian sources find his way to the

19 parchments, chiefly papal documents, 1550-1800; a few unpublished letters dealing with the Napoleonic wars; and several passports, hunting licenses, and the like, 1840-1860

reported—with some amused pleasure, one suspects—by the reverend librarian of St. Benedict's College, Atchison, Kansas? Although there are Swinburne letters in New Brunswick, New Jersey, and Browning manuscripts in Waco, Texas, it is American historical manuscripts that chiefly fill the closely packed pages of the *Guide*.

A little imaginative ratiocination might lead someone seeking letters of the Marquis de Lafayette to Lafayette College at Easton, Pennsylvania, where there are two hundred, mostly addressed to George Washington, although the only other holdings of that college are a few mediaeval manuscripts, an autograph collection of English literary figures, and the records of a late nineteenth century local slate industry. But a student of the Confederate States of America might easily be excused if he had not thought to look for 3015 letters of its Vice President Alexander H. Stephens, exchanged with his brother Linton between 1834 and 1872, in the Manhattanville College of the Sacred Heart at Purchase, New York, or for a few papers relating to Confederate Army equipment and supplies in the Deschutes County Library at Bend, Oregon.

A detective or a poet could have much diversion from themes inspired by leafing through the *Guide*, but the student of American history will be even more grateful to the National Historical Publications Commission for this remarkable work, which is the first to provide adequate indication of where his materials may be hiding. He cannot fail to note the extent, the variety, and the richness of the holdings of a number of the older privately supported historical societies. For example, the Maryland Historical Society, founded in 1844, reports to the guide: "About 1,500 linear ft., 1582 to date, relating chiefly to Maryland history, but including much of national interest. The Calvert Papers, the private papers of the proprietors of Maryland, 1582-1770 (1,300 items), include government, land, and colonization records of the colony, records of the Maryland-Pennsylvania boundary dispute, and personal papers of the Calvert family." There follow in the *Guide* four

columns summarizing the papers of national political figures, military leaders, Maryland families, of business, religious, and social organizations, of railways, foreign trade, iron manufacture, shipping, and much else, that members of this society are familiar with.

Many of the remarkable collections of independent historical societies were acquired early in the nineteenth century when such organizations were the only ones concerned with the preservation of the record of American history. Yet even today, when interest in such papers is vastly increased and the number of libraries seeking them has multiplied, the collections of many of the older historical societies continue to receive important additions of quality equal to anything acquired in the early years. The Missouri Historical Society's Jefferson papers were, for example, a twentieth century gift from William K. Bixby. The highest point in the collecting history of the Massachusetts Historical Society was reached in May 1956 when it simultaneously received not only the papers of four generations of the Adams family, but those of Paul Revere. Only a little over a year ago the Maryland Historical Society raised a very substantial sum of money to purchase the Benjamin Henry Latrobe collection of 8,800 letters, 310 paintings and drawings, and 14 diaries. Latrobe's sketches give a remarkably graphic picture of the United States between 1796 and 1820. Not only are his papers of high architectural importance, but they contain much material of general historical significance. The acquisition of this collection is a memorable accomplishment.

The collecting and safe preservation of historical source is the indispensible first step towards the writing of history, but it is only the first. If such sources are to be of use, they must be placed in order and made available to those who have need of them. Worthington C. Ford's definition is worth remembering:[4]

> Before the writer of history can exist the material must be placed at his service. In that sentence the functions of the historical society are summarized, it collects or makes available the records of the past; it encourages the investigator and writer of history by offering these records in a form fitted for his purpose.

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[4] *Addresses Delivered at the Observance of the Centennial of the New Hampshire Historical Society*, Sept. 27, 1923 (Concord, 1923), pp. 57-58.

In the effort to make available their manuscripts, historical societies have printed many hundreds of volumes of documents. In the past decade new techniques of microreproduction have been employed to increase the flow of material at more reasonable cost. The State Historical Society of Wisconsin has made available on microfilm the great body of frontier manuscripts collected by Lyman Copeland Draper. The Massachusetts Historical Society has issued microfilm editions of the Adams Papers and of the papers of General Henry Knox. The Library of Congress has undertaken to make the Abraham Lincoln and other Presidential papers more accessible and useful to scholars by means of microfilms accompanied by printed indices. Even when publication by conventional means, or reproduction of the originals through microphotography, is impossible, an institution possessing manuscripts still has the obligation to place its papers in the best possible order, to issue guides that will make their existence known, and, at the earliest possible time, to report its holdings to the Union Catalogue of Manuscripts of the Library of Congress.

Now all these things take time and money, for they require the employment of skilled people, who are engaged week after week, year after year, in meticulous work that does not show. For that matter even the most important manuscripts do not readily strike the eye of the uninformed observer. The Calvert papers, or those of John Winthrop, William Penn, Benjamin Franklin, George Washington, or Abraham Lincoln, when housed in gray cardboard manuscript boxes on shelves in a vault, are less dramatic than a cigar store Indian or a bit of gaudy carving from a steamboat. It is, as I attempted to indicate earlier, far more difficult to arouse widespread popular support for them than for a historic building that tells something of its story to every passer-by. Yet without the continued health and well-being of the libraries that contain such sources, we can have no certain knowledge of our past. I repeat again the assertion made one hundred and fifty-seven years ago by the New-York Historical Society:

> . . . without the aid of original records and authentic documents, history will be nothing more than a well-combined series of ingenious conjectures and amusing fables.

This is the counterpart of basic research in medicine or the sciences; the indispensable foundation without which specific discoveries cannot be made. As a case in point, I quote the opening paragraph of Dr. R. W. G. Vail's 1959 Director's *Report* of the New-York Historical Society:

Every now and then the unique importance of our collection is emphasized when an item of some distinction is rediscovered by an expert and heralded to the scholarly world as an important find even though its possession was no surprise to us. This last year a historian from one of our neighboring universities "discovered" in our manuscript collection the original manuscript of paper Number 64 of *The Federalist* in the handwriting of John Jay, thus presumably proving that he was its author. Since we had had this significant document filed for years with our other Jay papers there did not seem to be too much reason to get excited about it, though it did make a good newspaper story throughout the country.

Few books of American history are published today without some expression of the author's gratitude to one of the older historical societies for assistance or for permission to publish manuscripts in their possession. The holdings of these societies turn up with remarkable frequency in the Franklin and Jefferson Papers, and others of the great editorial projects inspired by the National Historical Publications Commission. The Editors of *The Papers of James Madison,* for example, obtained copies of documents from fifty-five historical societies and fifty-three privately supported college libraries, yet, according to Dr. Ralph L. Ketcham.[5]

The three largest providers have been the Pennsylvania, New-York, and Massachusetts Historical Societies, each of which had over one hundred Madison items.

Dr. Ketcham goes on to remark:

After visiting scores of both public and private manuscript depositories, I have no hesitation in saying that insofar as protection from the elements, prevention of theft, and care in arrangement are concerned, the advantage over the years lies overwhelmingly with the private societies.

[5] Ketcham to author, Jan. 7, 1960. Dr. Ketcham is now on the staff of *The Papers of Benjamin Franklin* at Yale University

Professor Merrill Jensen of the University of Wisconsin in 1955 wrote to Dr. Stephen T. Riley, Director of the Massachusetts Historical Society, to ask permission to reproduce manuscripts in a volume of American Colonial Documents, 1607-1776, which he edited for the series of *English Historical Documents* published by the Oxford University Press. In his letter Professor Jensen observed:

When I came to sorting out the documents according to sources in which I found them, I discovered that the Massachusetts Historical Society wins by many lengths! It is no flattery but a simple statement of fact that the Massachusetts Historical Society has published more of what I consider to be the basic documents for early American history than any other society in the country. I must confess, however, that I didn't realize it until I had compiled my volume.

It is clear from this, and a multitude of acknowledgments in scholarly works, that the older historical societies have made, and are still making, a valuable contribution to learning by maintaining their libraries and placing their resources freely at the disposal of those who have need of them. This is their business; they do it gladly, but it does not and cannot bring them financial return. And as " fair words," which are all they can hope for, " butter no parsnips " most of them are extremely hard up.

Many of the older societies have used their wits in imaginative ways to gain the support necessary for their activities. The continued existence of the societies demonstrates that where ideas exist, money somehow gets found for useful enterprises. Nevertheless all independent historical societies spend too much of their time piecing their rags together. Because of the widespread nature of this financial crisis, the Massachusetts Historical Society, the American Antiquarian Society, the Historical Society of Pennsylvania, and the Virginia Historical Society joined informally in 1958 to seek foundation support for a study of the problem. The Council on Library Resources, Inc., a subsidiary of the Ford Foundation, recognizing that a genuine library problem is involved, made a grant for this purpose. For a year I travelled through three quarters of the fifty states, visiting historical societies and as many other institutions of allied interest as time permitted. Wherever I went I was im-

pressed by the community of interests and feeling on the part of those societies responsible for major manuscript collection, by their devotion to what they are doing as hewers of wood and drawers of water in the cause of American history, and, in almost all cases, by the utter inadequacy of their financial resources. The result of this study will be published as a book later this year by the Harvard University Press.

During this investigation it was immediately apparent that privately supported historical societies have less money than their state counterparts. Only three private societies, the New-York Historical Society, the New York State Historical Association at Cooperstown, and the Chicago Historical Society, have annual incomes in excess of $150,000. All three owe their present degree of solvency to a small number of donors of relatively recent date. Only half a dozen other institutions, have incomes in excess of $100,000 a year. At the other extreme, the Georgia Historical Society accomplishes an amazing amount, thanks to able and devoted persons who do not reckon their time at commercial rates, on an annual income of less than $8,000.

By contrast, the annual budgets of the Ohio and Wisconsin societies, which come chiefly from public appropriations, are each over a half million dollars. It should be remembered, however, that societies receiving substantial public support are of necessity forced to spend a considerable part of what they receive on activities of popular interest, consciously or otherwise aimed at pleasing voters, who in turn influence legislators. More than fifty years ago, Reuben Gold Thwaites of the State Historical Society of Wisconsin, who was himself a singularly productive scholar, observed: [6]

> It takes money successfully to run historical societies. Legislatures, and the public at large that they represent, require coddling if their support is to be obtained.

Now coddling the public is an expensive business; in my view, a rather too expensive and risky business for a private organization to attempt, unless it has more capital behind it than most historical societies possess.

[6] *Annual Report of the American Historical Association for the Year 1909* (Washington, 1911), p. 308.

We have in this country a touching national belief that activity for its own sake is desirable; that the more people one induces to mill about in a limited space the better. Thus many organizations in need of financial support, historical societies included, embrace the simple faith that a substantial increase in membership will solve all their problems. It is not as easy as it sounds. To attract members, and even more to hold them, requires unremitting effort and expense, for the members must be given something—whether publications, exhibitions, parties, or what not—to maintain their interest. Dues of less than ten dollars a year are all too often completely absorbed in the expense of attracting and keeping the members that pay them. To derive any real financial benefit from membership is apt to require a higher annual fee than very large numbers of people are able or willing to pay.

A hard working man who genuinely wants to be a farmer can scarcely succeed today by his simple desire and industry. If he is to make money from the soil, he must command enough capital for the necessary machinery, and the more he has the better. So it is with institutions. The Museum of Fine Arts in Boston has in the past five years greatly enlarged its membership, and raised the income derived from this source from $38,000 to over $125,000. But because the museum has an annual income from endowment—all privately given—of nearly a million and a half dollars, it is possible to provide a constantly changing series of exhibitions and other attractions that induce new people to become members. Although visitors to Williamsburg annually leave more than seven million dollars there, the standards of this great restoration could not be maintained had not the late John D. Rockefeller, Jr. provided a substantial endowment fund in addition to sponsoring the original work of restoration and reconstruction. It is the income from an endowment fund of over forty million dollars that bridges the gap between the sums paid by visitors—large as they are—and the cost of operation. It no more follows that the methods of very large and liberally endowed institutions are suitable to the very much smaller operations of historical societies than those of Sears Roebuck are to the corner news-stand.

The sums needed by privately supported historical societies to insure the adequate maintenance of their libraries and manu-

script collections are small in comparison with those that are annually given in American cities for a variety of charitable and civic purposes. It is my belief that this historical equivalent of basic research in the sciences can only be supported by large gifts from individuals or foundations; that the attempt to achieve the same end by a great number of small gifts is self-defeating because of the variety of expensive and time-consuming activities that are required to induce them. The Missouri Historical Society has in recent years been remarkably successful in raising current funds through a great variety of activities. Yet its able Director, Mr. Charles van Ravenswaay, in the concluding paragraph of his 1959 *Report*, observed:

> The funds which we have raised from many sources represent an unusual record of achievement, and a certain amount of this effort is very healthy for any organization. However, there is a point of no return in such endeavors, and that point is reached when so much effort is spent on raising money that the essential and learned purposes for which the organization was created, suffer. That point has been reached. While we must continue our essential money-raising projects for many reasons, we must also find a long-range solution to our financial needs which will provide a certain assured income each year. Either income from taxation, or income from endowment would seem to be the two obvious answers. There may be others. But whatever the answer is, the problem should be carefully studied, and a long-range plan developed to achieve it.

This forthright statement is of general application. I quote it not only here but in my forthcoming book because it sums up so well the situation of many other organizations than the Missouri Historical Society. I can only hope that the study that I have made will increase the general awareness of the service that this, and other privately supported societies, have rendered to American history through the maintenance of their libraries and manuscript collections, and that it may create greater understanding of the high importance of many things that cannot readily be seen, that do not lend themselves to popularization, but that must be maintained if we are to retain the essential sources of the knowledge of our past. Or to adapt the words of St. Paul to another purpose: "for things which are seen are temporal, but the things which are not seen are eternal."

WOMEN ATTORNEYS OF COLONIAL TIMES

By Sophie H. Drinker

BEFORE the last half of the eighteenth century, when few men and no women prepared themselves professionally for the practice of the law, people frequently brought their own cases to court, or appointed someone without specialized legal training to transact business for them. Such a deputy or agent was called an attorney-in-fact rather than an attorney-at-law, since the latter term signifies one who has been formally admitted to the bar. While seventeenth and eighteenth century women could not enter the legal profession as attorneys-at-law, they could be and often were attorneys-in-fact.

There was a difference, however, between a man and a woman attorney-in-fact. When a man went into court as a plaintiff or defendant, no one inquired whether he were married or not. When women appeared, they were divided into two categories: those who had husbands and those who did not. From the beginning of feudal times, the married woman had been known as a *fême couverte*; the single woman, or widow, was called a *fême sole*. Each had her special legal status.

The *fême couverte* (married woman) had no legal or civil entity. She could not own property, make a will, sue or be sued. Lord Coke, in 1600, defined the status of the married woman in the famous sentence: "Husband and wife are one before the law, and the husband is that one." [1] When a *fême couverte* came into court, therefore, it was only as her husband's representative and with his permission.

The *fême sole*, on the other hand, be she spinster or widow, could hold property:—land, buildings, ship, merchandise, personal belongings and so forth. If she had children, she was the head of her family and, to a large extent, her own mistress with rights approaching those of our contemporaries. In court,

[1] Sir Edward Coke, *Institutes of the Laws of England*, 4 vols. (London, 1818), I, 130.

therefore, she spoke for herself and also, at times, in behalf of others.

The story of women's participation in litigation can be found scattered through the minutes of Court records. As the accounts repeat themselves over and over concerning the same questions of law and the identical problems for the disputants, one comes to realize that the dry, often repetitive, wording does more than call attention to the mere existence of the women attorneys-in-fact. When a *fême couverte* speaks as her husband's agent, one senses that the interdependence between man and wife was stronger than the subservience of wife to husband. When a *fême sole* speaks for herself, or for others, one perceives not only courage and competence in women but also an independence of spirit we have not been taught to expect. And, from the documents as a whole, one understands more clearly the conditions that confronted women in the early days of colonial experience and that demanded their activity beyond household duties.

I

There was nothing new about colonial wives taking part in litigation. In feudal times, the English Courts maintained: " it is an indisputable law that a wife can act as attorney to her husband." [2] Necessity had written this law in order to offset the inconvenience caused by curtailing the married woman's exercise of an authority which she was wielding in practice. Before the industrial revolution had introduced machines and factory system, men worked on their own farms or conducted a business from their homes. Women functioned as their husbands' partners in agriculture, in the manufacture of clothing, tools, and utensils, in the management of estates. Wives played a large part in providing the family income. Consequently, they understood financial problems and, in controversial questions of property, frequently assisted their husbands in the official capacity of agents.

The Colonists brought many feudal laws and customs with them and, from the beginning, expected wives to help their husbands make a living. In the new country, where everything

[2] Tapping Reeve, *Law of Baron et Femme* (Burlington, Vermont, 1816), pp. 79-80.

had a future, pioneer conditions challenged the energy, intelligence and common sense of every man, woman and child. Wherever there was a home and a settlement, the value of women rose and opportunities for them to take the initiative occurred over and over again. Many a married man in colonial times agreed with President Clapp of Yale that a wife served as a "faithful friend and monitor to her husband." [3]

Colonial women not only produced wealth by means of farming and manufacturing, but they attended to such matters as "seating" land, establishing boundaries of farms, trading merchandise, generally helping to provide an adequate income for the family's support and, in cases of controversy, appearing in court. Examples are at hand to show that wives conveyed land, recovered debts, signed leases, received rents, defended their husbands' good name, sued and were sued on their husbands' contracts.

One seventeenth century wife, Sarah Bland by name, was her husband's "true and lawful attorney." John Bland, a prosperous London merchant, owned large landed estates in Virginia. In 1678, he sent his wife overseas with the legal authorization to buy and sell land and to receive debts owing him from his brother's widow. Her power of attorney has been preserved:

By this Public instrument of procuration or letter of Attorney bee it knowne and manifest . . . that on the two and twentieth day of the month of August 1678 before me, Nicholas Hayward, Noatary and Tabellion [secretary] public, dwelling in London . . . personally apeared John Bland merchant of this cittie of London . . . who hath made, ordained . . . his loving wife, Sarah Bland, now bound from hence for Virginia, his true and lawfull Attorney . . . and to his use to call to an account all persons whatsoever in Virginia his debtors (and pticulery Mr. Bernard Sykes and Mr. Codd), also to enter into and take into his custodie . . . the severall plantations of Bartlett, Kimecheys, Herring Creeke, Sunken Marsh Plantation, Bassett's Choice, Jamestown Lott, Lawnes Creek and all other lands . . . and estates whatsoever due . . . unto the sd John Bland . . . and receive of the widow, Executors, Administrators, goods or estate of Theodorick Bland, late of Bartlett upon James River in Charles City County in Virginia, merchant deceased or of

[3] Edwin S. Welles, "Womanhood in Early America," *Connecticut Magazine*, XII (1908), 233-239.

any pson or psons whatsoever all and every the lands . . . and all other things which any pson . . . in Virginia are oweing . . . unto the sd constituant upon recoverys and receipt to give acquittances . . . and all the sd Plantations Lands . . . and estate whatsoever . . . to grainte bargaine sell . . . at such rates and prices . . . as his sd wife and attorney shall find convenient." Signed John Bland . . . sealed and delivered with his seal affixed red wax in the presence of [witnesses names given]. Nic. Hayward, Notary public.

A wife acting as agent for her husband was required to bring her power of attorney to the judge before she could carry out her husband's wishes. Sarah Bland, upon arrival in Virginia, evidently lost no time in offering hers: "The within letter of attorney being presented to the Court of Charles Citty County by Mrs. Sarah Bland desires the same might be proved which was admitted and done in open court . . . and ordered to be recorded Feb. 17, 1678/9. Testes, Will Archer." Shortly after, Sarah conveyed a tract of land in Surry County to Wm. Bartlett and set in motion the litigation against Colonel Codd who had married her husband's sister-in-law.[4]

Elizabeth Vaulx, also in 17th century Virginia, signed a lease for land to Jaratt Hawthorne. In so doing, she called herself "attorney and procuratrix of my loving husband, Robert Vaulx."[5] The word "procuratrix" means a female agent or attorney-in-fact.

Sarah Livingston of New York married one of George Washington's generals, William Alexander, (later Lord Stirling). In 1777, she received a power of attorney from her husband to represent him during his absence in England. He had learned that his New York and New Jersey tenants were refusing to pay their rents to his estate. Through the medium of the *Pennsylvania Packet* of September 12, he advertised that they must not pay "to any other person than myself or my attorney . . . Sarah, Countess of Stirling."[6]

When the good name of their husbands was at stake, women proved themselves first-rate fighters in tort cases. Anna Joung,

[4] *William and Mary Quarterly*, 4 of Ser. II (July, 1924), 202, 203.

[5] Philip A. Bruce, *Economic History of Virginia in the 17th Century*, 2 vols. (London, 1907), I, 412; see also Lease from Mrs. Vaulx to Jarratt Hawthorne, May, 1659, York County Deeds, Orders, Wills, etc., 3, 1657-1662, Virginia State Library, Richmond, Va.

[6] *Archives of the State of New Jersey*, 2 of Ser. I, 467.

" in the Behalfe of hur husband Jacob Joung," a skilled interpreter, sued one John Taylor in an action of defamation. Taylor had accused Anna's husband of hiring Indians to kill Christians. The case Joung *v.* Taylor came up in the Court at Newcastle, Del., on Nov. 3, 1680 and Taylor backed down, declaring that " What hee had sayd was only by hearsay." The Court ordered him to " publicqly acknowledge his fault " and to pay the costs of the suit.[7] Mrs. Joung had the victory.

To protect their husbands from defamation of character, wives even crossed the ocean. Elizabeth Pott's petition " on the behalfe of her husband John Pott, Doctor of Physicke and late Governor of Virginia " shows in detail how the " suppliant," with her power of attorney in her pocket, expressed her appeal. The doctor had been accused of " markinge other men's cattell for his owne . . . ," unjustly so, according to his loyal helpmate who had " taken a long and dangerous voyage to her excessive charge and the great hasserding of her Life to appeal to your Sacred Majesty touching the wrong done unto her . . . husband." Since Dr. Pott, in 1639, was the only man in his locality " well practiced in chirurgery and physic," he had the support of public opinion. King Charles referred the matter to the Virginia Commissioners, who gave Elizabeth a hearing and restored her husband " unto his lands, and Libertie. . . ." [8]

One way or another, the subject of debt plagued colonials. Either one owed money or one was trying to collect it. Eadith Craford of Salem, Mass., was both sued and brought suit on her husband's contracts over a period of several years. In 1662, she acknowledged a debt to Mr. Batters, which she promised to pay in merchantable codfish. In 1666, in the lawsuit of Craford *v.* Savage, Eadith was deposed and sworn before Wm. Hathorne in the Quarterly Court of Essex. She claimed that, in 1661, there was " delivered to Capt. Savage by me and my husband at Mr. Oliver's dock in Boston, fish at money price. . . ." [9]

[7] Jeannette Eckman, " Crane Hook on the Delaware," *Institute of Delaware History and Culture, University of Delaware* (Newark, Delaware, 1958), p. 35. See also *Records of the Court of Newcastle on the Delaware, 1676-1699*, 2 vols. (Colonial Society of Pennsylvania, 1904-1935), 1680, p. 438.

[8] Thomas J. Wertenbaker, *Virginia Under the Stuarts* (Princeton, 1914), pp. 64-67; see also Petition of Elizabeth Pott, September, 1630, Public Record Office London C. O. 1/5 No. 85 fo. 234r.

[9] *Records and Files of the Quarterly Courts of Essex County, Massachusetts 1636-1683* (Salem, Massachusetts, 1911-1921), II, 390; III, 330-333.

Maryland was the only Colony to abandon the feudal custom of allowing women to represent their husbands in court. In 1658, Governor Fendall issued a Proclamation to the effect that wives should not be "admitted or allowed as attorneys for their husbands."[10] Apparently, there had been abuses of the privilege. Mrs. Pakes, for example, in 1650, may have taken unbecoming liberties. When challenged as to her power to contract on her own authority," shee made answare that shee had a Letter of Attorney from her husband to doe any business whatsoever."[11] And one Anne Hammond, attorney for John Hammond, had failed to appear "upon her lawfull summons."[12]

But Governor Fendall's ruling was against the trend of contemporary usage. The Courts generally accepted women as agents of their husbands and often made concessions to the litigants. In the lawsuit of Williams v. Tallent, 1679, the Delaware record reads: "the def'ts wyfe appearing in Court but producing no letter of attorney from her husband, with both parties consent, the action is continued."[13] The defendant was not thrown out but his "wyfe" was given time to fulfill the Court's requirements.

Hannah Penn, the wife of William Penn, founder of Pennsylvania, is an example of a *fême couverte* wielding far more power than the law allowed. William Penn owned his vast province on the feudal basis of absolute proprietorship. In 1712 ,he had a stroke and could no longer attend to governmental matters. Wife Hannah stepped in as substitute for the Proprietor. Historians agree that she had no power of attorney from her husband. Nevertheless, for six years, she acted as if she were his legal deputy. Nor was she challenged by the provincial Councilmen or Commissioners of Property. Far from it, Pennsylvania men in positions of authority aided and abetted her. These representatives of the proprietary party favored Hannah over her step-son William, the heir-at-law, and ignored the letter of the law concerning agency.[14]

[10] Matthew P. Andrews, *The Founding of Maryland*, 2 vols. (New York, 1933), I, 201-202.

[11] Richard B. Morris, *Studies in the History of Early American Law* (New York, 1930), p. 176. See also *Archives of Maryland* (1650), X, 15, 16.

[12] Andrews, *op. cit.*, I, 201-202.

[13] *Newcastle Records*, *op. cit.*, 1679, p. 374.

[14] Sophie H. Drinker, *Hannah Penn and the Proprietorship of Pennsylvania* (Philadelphia, 1958).

Hannah's role as the "helpmeet" of a famous man has brought her to the attention of historians. Yet, for the times, she was not exceptional. Her efforts in behalf of her family's economic security may well be regarded as a reflection of the work of many other less conspicuous but equally competent women. There can be no doubt that men at large preferred to uphold the *custom* of partnership between husband and wife rather than the *law* of the *fême couverte's* incapacity.

II

The rights of the *fême sole* derive from a far older era than the term itself. Anglo-Saxon England, with its agricultural economy in which woman-power was indispensable, provided women with ample opportunity to own land and to produce wealth from it.[15] When William the Conqueror came (1066), he established a feudal, military society in which women could not compete with men. William demanded men capable of bearing arms, as well as money, from all landowners. But while he could suspend the independence of women in the married state as a military expedient, he was obliged to allow the unmarried woman of property to retain the former free status of all women, so that he could commandeer her man-power and tax her land.[16] As time went on, as the middle class rose in economic importance, as trade increased, the advantage to everyone of a self-supporting widow was so obvious that her independence in the business world was ensured. A woman, having acquired experience as her husband's partner, could keep on with whatever occupation she had learned. In case of legal difficulties about her land, her property, her trade and so forth, she could appoint someone to be her attorney-at-law, or her attorney-in fact, or she could be a litigant in *propria persona.*

As a group, the *fêmes soles* continually shifted. A spinster, for example, would marry and change her status. Elizabeth Haddon, that remarkable young woman who led a group of settlers to New Jersey in 1680, brought with her a power of attorney from her father. He owned the five hundred acres for

[15] Doris M. Stenton, *The English Woman in History* (New York, 1957), pp. 1-28.
[16] Albert F. Pollard, *The Evolution of Parliament* (London, 1920), p. 156.

which she undertook the responsibility as his agent. This authority she exercised to the satisfaction of all concerned until she married John Estaugh, became a *fême couverte* and handed her power of attorney over to him.[17] As for the widows, they remarried once, twice, and even thrice, resuming their former status as wives.

On the other hand, there were times when a *fême couverte* obtained some of the privileges legally due a *fême sole*. It had long been the custom in England for a widow to make a pre-marital contract with her new husband, insuring her freedom to act in a specified capacity. When, for example, in 1681, Elizabeth, widow of William Lawrence of New York, was about to marry Philip Carteret, Governor of New Jersey, she reserved the right of disposing of the lands conveyed to her by her first husband. She also received a certificate of the court admitting her as guardian for her seven Lawrence children.[18]

In cases where the absence of her husband prevented a wife from fulfilling her business obligations, she could ask for a *fême sole* status. Such a petition was written by Susanna Dastuge of Massachusetts (1777): "There is a quantity of goods in the hands of Capt. Robert Robins the property of your petitioner and her copartner Cynthia Wilkinson unaccounted for to the said petitioner and her co-partner and that, by the absence of her husband Bernard Dastuge, and not being impowered by him, she is not able to institute and prosecute to final judgment any action for the recovery thereof." The Court resolved that Susanna be empowered to bring action against Capt. Robins "as tho' her said husband was personally present," thus granting this wife the authority to sue on her own contract.[19]

Or again, a deserted wife who needed money might have difficulty in transacting the business of selling her husband's property. Mrs. Susannah Cooper of Virginia had been deserted and no purchaser would treat with her "on account of her coverture." In short, no one would risk signing a contract with

[17] George R. Prowell, *History of Camden County*, New Jersey (Philadelphia, 1886), p. 646.

[18] F. A. Hill, *The Mystery Solved* (Boston, 1888), p. 75. See also Thomas A. Lawrence, *Historical Genealogy of the Lawrence Family* (New York, 1858), p. 136.

[19] *Acts & Resolves of the Province of the Massachusetts Bay Colony* (1777-78), XX, 73.

a legally helpless married woman. The Court " granted Mrs. Cooper the free disposition of her estate, enabled her to make contracts in her own name, to sue and to be sued as though unmarried." [20] As in Virginia, so in Maine. Goodwife Donell, having been deserted by her husband in 1666, was permitted by the Maine Provincial Court " to demand and legally to recover all such debts as are due to her made by herself or contracts by her own dealings." [21]

When James, the husband of Mrs. Fortune Mills in Surry County, Virginia, was " missing," Mrs. Mills directed an appeal to the Court for permission to manage her husband's affairs and, in the same declaration, gave her brother a power of attorney to assist her: " It is now six months since he was expected . . . It is now become a doubtful question whether hee bee living or dead, whereby his most important affairs in Virginia remain unmanaged, his businesses and estates suffering . . . from whence ariseth an absolute necessity that some measures bee taken for ye paying and receiving of debts, together with suits in law; the which his attorney with whom hee left power doth refuse to doe as being not therein much experienced. Nor was it soe intended by the said James Mills, whose purpose was to have been not long from home himself. Now . . . by the laws and customs of England, a man's wife may lawfully buy, sell, bargaine, pay or receive as well as her husband until he signify the contrary by publick contradiction. Know all men by these presents that I, Fortune Mills, the lawfull wife of the James Mills for ye reasons aforesaid do resolve to manage the affaires of my husband and to the best of my power to pay, receive, order, and effect all present businesses appertaining thereunto. And for my better accomplishment of the same, I doe hereby declare that I have empowered . . . my brother Geo. Jordan to pay . . . to bargain, buy and sell . . . and answer all suits in any court of justice in Virginia . . . until it shall please God to send back my husband. In witness whereof, I have hereunto set my hand and seal this first day of March, 1661." Signed by Fortune Mills and recorded by the clerk of the Court.[22]

[20] Morris, *op. cit.*, p. 175.

[21] *Ibid.*

[22] Philip A. Bruce, *Social Life in Virginia in the 17th Century* (Richmond, Virginia, 1907), p. 146; see also petition of Fortune Mills, Surry County Deeds, Wills, etc., I, 1652-1672, Virginia State Library, Richmond, Va.

Armegot Printz, wife of John Papegoya, is an example of a pioneer landowner whose legal status was never clearly defined. This courageous woman was the daughter of Governor Printz who, in 1643, led a group of Swedish settlers to the banks of the Delaware River below Philadelphia. Although her father soon returned to Sweden and her husband sailed the high seas most of the time, Armegot with three of her five children made their home on Tinicum Island. In 1656, when the Dutch took possession of her property, she petitioned the authorities in New Amsterdam that letters patent be issued to her for her father's land. Governor Stuyvesant granted her the rights she wanted and, in 1660, received her taxes in the form of a fat ox, fat hogs, bread and corn. Armegot did her best to attract other settlers but failing in this struggle, she sold out to Joost De La Grange and left the country. Bad luck pursued her. The bankers would not accept De La Grange's bill of exchange. Nothing daunted, she sailed back again, secured a legal judgment against De La Grange but never succeeded in collecting the money. In 1664, when the English ousted the Dutch, De La Grange's widow Margaret and her new husband Andrew Carr received a patent for the Printz estate. Then Armegot brought suit for her rights and appeared at the General Court of Assizes in New York, 1672. Pleading for herself, she had the satisfaction of hearing a judgment entered for her as plaintiff. The Carrs were ordered to pay the principal, costs and damages.[23]

Until her husband died in 1667, Armegot was a *fême couverte*. But no one, apparently, challenged her authority at the time. In 1676, after she had sold out completely to Ernest Cock and had left America forever, De La Grange's son claimed the estate on the ground that Mrs. Papegoya had been a legally helpless married woman during negotiations with his father. And yet, without a power of attorney, she had conducted the business necessary to her tenure of land *as if* she had been a *fême sole*.

Upon the death of a woman's husband, her position as a *fême sole* was beyond dispute. Her first prerogative was then to make her will. A *fême couverte*, under ecclesiastical and canon law,

[23] William E. Sawyer, "Governor Printz' Daughter and the Island of Tinicum," *Pennsylvania History* XXV (April, 1958), 109-114.

had no property of her own and therefore had none to convey. If a wife wished to dispose of possessions regarded as hers, she required her husband's permission to do so. But as *fême sole*, she automatically acquired the right to convey any property she may have had. One of the first wills recorded in Essex County, Massachusetts, is that of Joanna Cummings in 1644. This mother as head of her family, left instructions that her property was " to improve for the children's good that it may not bee bangled away." [24]

If a wife had been made her husband's executrix, as many were, her most pressing task was to have his will probated. This responsibility took countless women into court, where they procured the judge's consent to act as executrix and administratrix.

A widow had the duty of looking out for the welfare of her children. In 1632, Jane Winlee of Virginia pled her own case against James Knott for his " misusage " of her indentured son. The Court, at her suit, ordered Mr. Knott to " remedie " his ways and to return son Pharoah to his mother.[25]

A *fême sole* made her own contracts and could be sued in her own right. Elizabeth Kinsey had guaranteed to take charge of five beaver for John Test but she had failed to return them to the owner. In the court at Upland, Delaware (1679), Elizabeth was at first represented by one John Ashton. When she appeared to take up her own defense, however, Ashton withdrew, saying that he was her attorney, she " his mistress " and could speak better for herself.[26]

If a *fême sole* could be sued, she could also sue. Mary Venderdonck, a " physician " in Maryland with a flourishing practice, produced a letter in court (1661) from former Governor Fendall engaging her as a doctor. She claimed that he had sent three servants to her to be cured. One had a sore leg, the second had a sore mouth, the third suffered from a canker. She demanded a warrant against Mr. Fendall in an action of debt to the value of 1200 lbs. of Tobacco. About the same time, Mrs.

[24] " Will, May 11, 1644," *Essex Antiquarian* (Salem, Massachusetts, 1897-1909), I, 187.

[25] Susie M. Ames, " Law in Action: the Court Records of Virginia Eastern Shore," *William and Mary Quarterly*, 4 of Ser. III (April 1947), 183.

[26] John F. Watson, *Annals of Philadelphia and Pennsylvania in the Olden Times* (Philadelphia, 1877), p. 246.

Vanderdonck sued one Christopher Russell in an action of debt. The defendant had made agreement that he would pay 1600 lbs. of Tobacco, " so that the sd Mary Vanderdonck releas him of the Accoumpts that was betwixt them . . . and discharge him of all accounts between hur and him."

By the next year, 1662, Dr. Mary had married Hugh O'Neale, but she still appeared in court in her own behalf, this time for defamation of character. William Heard had spread abroad a report that Dr. Mary has poisoned one Joane Parker. At her suit, Heard apologized, " owning his fault and declaring that hee never intended to defame or troble her . . . and hereby acknowledged himself very indiscreet . . . if her credit may be thereby any ways stained, hee both humbly desire her and her husband to forgive him, hee being contented to pay the cost and charge of suit. . . ." In open court, Heard promised to pay . . . " 400 lbs. of good sound merchantable leaf tob: and caske . . . for Joane Parker's phisick." [27]

Even after the rough and ready life of the pioneer period had developed into a civilization patterned upon that of Europe and England, colonial *fêmes soles* continued to function as independent members of the community.

Temperance Grant of Newport, Rhode Island, may be cited as an illustration of a merchant successfully conducting a business for over twenty years. She was the wife of Sueton Grant, owner of an importing house and of several privateers. Mr. Grant died in 1744, leaving his widow the executrix of his estate. With the help of her young son, whom she trained to succeed her, Temperance made contracts for buying and selling goods, she sued others and was sued herself for debts incurred in her business dealings. She wrote petitions concerning her own and her daughter's property.

There are records of at least seventy-five cases in which Temperance Grant was a party during the years 1744 to 1766. She employed lawyers to try the cases for her in the Inferior Court of Common Pleas " holden at Newport County, Rhode Island." Upon one occasion, however, she spoke in propria persona. While listening in the court room to the argument of her counsel, she detected dishonesty in his presentation of the

[27] *Arch. Md.*, LIII, lii, 139, 145, 148, 212, 215, 220, 229, 230, 241, 262.

facts. She then interrupted the proceedings, insisted that the Judge allow her to tell her own story and, by her competence in pleading, persuaded the jury to enter judgment in her favor.[28]

III

A *fême sole* also had the right to receive a power of attorney and to transact business for others.

Mrs. Rebecca Heathersall, "widdow in York County at the head of Ludlow's Creek in Virginia" was constituted by "Anthony Hall, gent., late of Virginia and now of the Bogge in England to be his lawfull "attorney." In the letter of attorney, he identified Mrs. Heathersall as "my trusty and well-beloved friend" and ordained that she "recover and receive of all and every such person and persons which are indebted to me" all moneys owing to him and that she attend to his business affairs. This letter was proved in court by the oath of Capt. Zachary Taylor and recorded in 1682.[29]

Sarah Bland, already mentioned as the attorney-in-fact for her husband, John, became a widow in 1680. She was then called his relict and executrix and undertook the task of settling his estate. For this work and also to help her in handling the problem of her son Giles' debts for which she was being sued, she employed an attorney, Thomas Blayton. There are petitions and other records of the business she transacted as a *fême sole* in her own behalf. With Thomas Povey, the co-executor of John Bland, she had inherited eight thousand Virginia acres. In a law-suit against William Randolph, Sarah acted as the attorney-in-fact of her associate Povey.[30] Here is an example of a woman functioning in all three categories of attorney: first, a *fême couverte*, agent for her husband; second, a *fême sole*, her own agent and employer of an attorney; third, a *fême sole* attorney-in-fact for someone outside of her family.

[28] George C. Mason, *Reminiscences of Newport* (Newport, R. I., 1884), pp. 359, 360. See also Records of the Inferior Court of Common Pleas for Newport County, Rhode Island, 1744-1764, now in the Clerk's Office of the Superior Court, Newport County.

[29] Bruce, *Social Life*, p. 146; see also Appointment of Mrs. Hethersall, York County Deeds, Orders, Wills, etc., 6, 1677-1684, Virginia State Library, Richmond, Va.

[30] *Virginia Magazine of History & Biography*, I (July, 1893), 50, 107, 118; XVIII (October, 1910), 366, 368; XX (October, 1912), 350; XXI, (April, 1913), 134; XXVIII (October, 1920), 354, 355.

Gertrude James, one of the earliest settlers on Kent Island, Maryland, and widow of the Rev. Cartwright James, was a victim in the plot of Captain Evelin to usurp the rights of the pioneer William Claiborne. Mrs. James had a power of attorney from the absent Claiborne as to his share of the stock held by a London company. She bravely fought for her own and Claiborne's property. When Evelin seized her cattle for his own use, she brought suit against him and received a judgment by the court in 1650 that the "damages should be alleged and drawn up in form the next day." [31]

From 1674 to 1689, Maria Van Cortlandt Van Rensselaer was the moving spirit of Rensselaerswyck. This settlement had been founded by the Dutch, where Albany now stands. It extended for about twenty-four miles along both banks of the Hudson River, "stretching two days into the interior." After its Director, Jeremias Van Rensselaer, died in 1674, there was no heir available to succeed him. The task of administration fell upon "the worthy, virtuous Juffrow Maria." Her official position was that of Treasurer, for which duty she received a salary, payable in bushels of wheat. For years, she corresponded with the Dutch Van Rensselaer cousins who owned stock in the family company and who depended upon her to keep the colony intact in spite of bad times and political upheavals. Upon one occasion, Richard Van Rensselaer wrote to her from Amsterdam: "I wish that you had sent me a power of attorney to settle the account of the colony. . . ." Maria appeared before the court in Albany several times with powers of attorney from relatives and from Dutch merchants outside the family circle, enabling her to buy and sell property on her own account as well as on theirs.[32]

One of the two attorneys-in-fact whose work and reputation approached the standards set by professional lawyers was Anna Meynders of New York City. In 1684, Anna was representing Volckert De Glabbais who had loaned 490 guilders to Hartman Wessell of Arnhem, Holland. Wessell had been engaged as

[31] Wertenbaker, *op. cit.*, pp. 69, 71, 107, 108; see also B. C. Steiner, "The Beginnings of Maryland," *Johns Hopkins University Studies in Historical and Political Science*, XXI (Baltimore, 1903), Nos. 8, 9, 10; p. 71, 73.

[32] A. J. E. van Laer, ed., *Correspondence of Maria van Rensselaer* (Albany, New York, 1935); see also *Minutes of the Court of Albany*, II, 185, 253, 254, 273, 355, 388, 396.

surgeon for the ship " Margarett " on her voyage from Amsterdam to England and thence to New York. It was agreed that the doctor should refund the money unless the ship foundered. Although the " Margarett " reached New York safefly, Wessell did not make the repayment. Anna Meyanders produced Wessell's promissory note. There seemed no doubt of his indebtedness. Wessell's counsel, however, maintained that while his client was at sea, De Glabbais had sold the bill of exchange to Anna Meynders and that she " hath bought and purchased the same of meer malice to vex and prosecute the defendant."

This charge was an insult to Mrs. Meynders' person as well as a serious accusation against her professional integrity. At common law, it was forbidden for a person, particularly if an attorney, to purchase an interest in the litigation. By her able presentation of the facts in the case, Anna convinced the jury that she was acting solely as the constituted attorney for the plaintiff and had purchased no interest in the litigation itself. That she could have argued and won against so well-known and so successful a lawyer as Mr. Samuel Winder was indeed a victory for all women who entered the courtroom.[33]

Of all the women attorneys-in-fact in Colonial history, Margaret Brent is by far the most conspicuous and the most professional. Between 1642 and 1650, her name appears in the records of the Provincial Court of Maryland one hundred and twenty-four times. Margaret was a *fême sole* spinster who never married. She, her sister, and a household of servants came to Maryland in 1638, bringing with them a grant of land. From the beginning, Margaret worked for the good of the colony, looking after the welfare of children and Indians, assigning acreage to the men in her employ. Her brother Fulke gave her a power of attorney to transact business for him in his absence. Governor Leonard Calvert showed his respect for her energy and intelligence by consulting her on many matters of political import.

When Governor Calvert died unexpectedly in 1647, he made Margaret his executrix and residuary legatee. The Court granted her letters of administration, enabling her to dispose of

[33] *New York Historical Society Collections* LXXVIII (1945), p. 110; see also General Sessions of the Peace, New York (1683-1693), p. 4. MS at Criminal Court Building, New York City.

claims filed against the estate and to institute suits against persons indebted to the deceased governor. But this was only the beginning of Margaret's work. Leonard Calvert's death had left no one to act for the absentee Proprietor of Maryland, Lord Baltimore. The Court decided that Margaret, as the administrator of Leonard Calvert, should be accepted as "his Lordship's attorney."

It so happened, at this moment, that there was a crisis in the Colony's financial affairs. Gov. Calvert had hired a band of soldiers from Virginia to put down a local rebellion. When the fighting was over, Margaret Brent discovered that the whole of the Governor's estate was not sufficient to pay the soldiers' wages before dismissing them. The soldiers brought suits against Lord Baltimore. In order to meet the just demands of these men, Margaret, as the constituted attorney of the absentee Proprietor, decided to sell some of his many droves of cattle and some of his thousands of acres. When Lord Baltimore objected, the Assemblymen rose unanimously to Margaret's defense. They wrote to Lord Baltimore that "the Colony was safer in her hands than any man's in the Province and she rather deserves favor and thanks from your Honour for her so much concerning for the public safety." [34]

As the executrix of Leonard Calvert and as attorney-in-fact for Lord Baltimore, Margaret Brent entered more law-suits than anyone else in the colony during those years. So frequent was her appearance in court that the clerk used the customary designation of "gentleman" or "gent." for her. No one ever criticized her for ignorance of the law or for unethical legal conduct. She was generally successful as an advocate (except in her own behalf) and, in every way, upheld the dignity and honor of the legal profession.

Taken as a whole, these samples of the different types of cases undertaken by women attorneys-in-fact reveal not only ability but also familiarity with law and custom. The cases show, too,

[34] Andrews, *op. cit.*, I, 122-125, 183, 200, 202; see also *Arch. Md.*, IV, 67, 68, 118, 119, 132, 133, 149, 169, 181, 191, 192, 194, 203, 213, 214, 224, 226-229, 259, 262-266, 270-276, 290, 292, 308, 312-316, 312, 320, 325, 330, 333, 335, 338, 342, 344, 345, 348-358, 362, 364, 366-368, 370, 373-375, 378, 379, 382-385, 388, 399, 401, 407, 409-414, 417, 419, 420, 426, 428, 434-439, 454-457, 469, 471-475, 477-485, 488, 489, 494, 514, 516-518, 521, 524, 527-529, 532, 540-543.

that the Courts generally treated women with justice and respect. One sees, indeed, a tendency throughout the colonies to lessen the severity of the feudal restrictions upon the woman "under coverture." Enabling devices steadily increased her proprietary capacity and her power to function as a *fême sole.*

The circumstances that brought about the gradual disappearance of the women attorneys-in-fact were due to no lack of competence on their part. There was a change in the conditions that had favored the employment of the attorney-in-fact, whether man or woman. Law became a paid profession which men entered as a means of earning money. As the pioneer environment changed and Western European civilization spread, more and more trained lawyers took over litigation. In the developing industrial and financial life of the eighteenth century, the amateur at law could no longer compete, and the practice of people bringing their own cases to court fell into disuse. Women disappeared from the court scene until the reforms of the late nineteenth century allowed them to participate as trained lawyers.

THE JAMES J. ARCHER LETTERS:

A MARYLANDER IN THE CIVIL WAR, PART II

(Continued from March and June, 1961)

Edited by C. A. PORTER HOPKINS

IN this, the second and final, part of the collection of letters written by James Archer while serving in the Confederate army, the editor concludes the series begun in Volume 56, Numbers 1 and 2, March and June, 1961. In the earlier letters the reader has had a chance to observe Archer while in camp and battle, training and leading his men as he moulded a first class fighting unit. In these letters, dating from 8 July, 1863, shortly after his capture at Gettysburg, to 16 October, 1864, only eight days before his death in Richmond, we see Archer, the once active fighting man, chafing under the restrictions of his prison existence and longing for his Harford County home and family which he has not visited for five years.

Transferred from Johnson's Island prison camp in June 1864, Archer was sent to Hilton Head, S. C., on board the prison ship *Dragoon*, and exchanged in Charleston the first week of August. In Columbia, S. C., on August 6, he visited his Princeton classmate James Chesnut, whose wife, Mary Boykin Chesnut, recorded in *A Diary From Dixie*:

> Archer came, a classmate of my husband's at Princeton; they called him Sally Archer then, he was so girlish and pretty. No trace of feminine beauty about this grim soldier now. He has a hard face, black-bearded and sallow, with the saddest black eyes. His hands are small, white, and well-shaped; his manners quiet. He is abstracted and weary-looking, his mind and body having been deadened by long imprisonment. He seemed glad to be here and James Chesnut was charmed. "Dear Sally Archer," he calls him cheerily, and the other responds in a far-off faded kind of way.

Archer returned to Virginia eager to rejoin the fight. Assigned to duty on August 9 in the Army of Tennessee with orders to report to General John B. Hood, his old commanding

officer,[28] Archer was torn between going to Hood, for whom he had the greatest respect,[29] and remaining in Virginia with General Lee. In a letter to his sister Nannie, dated 17 Sept. 1864, he gives his reasons for staying in Virginia thus; " I was governed in my decision by consideration connected with my staff. Bob & Lemmon being prisoners & Oliver not well enough to accompany me I thought I might perhaps be able to help them all by remaining here."

In Special Orders No. 197, August 19, 1864, Archer was assigned to command his old brigade and Walker's brigade (temporarily united), which consisted on August 31, 1864, of the 1st Tennessee, 7th Tennessee, 14th Tennessee and 13th Alabama, with the 2nd Maryland Battalion attached.[30] On the 23rd of September, Major R. J. Wingate in his inspection report for the month of August had this to say of Archer's command:

This brigade is now commanded by Brigadier-General Archer, who will doubtless improve the discipline and general condition of this command. The Tennesseans have never been entirely satisfied since the consolidation. General Archer is almost idolized by them, and will, no doubt, harmonize the antagonisms that may have heretofore existed. Improvement is already apparent in this command since the date of my inspection, 13th of August . . .[31]

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[28] Special Orders No. 187, Para. XIV. *The War of the Rebellion: A Compilation of the Official Records of the Union and Confederate Armies* (Washington, D. C., 1880-1901), Series 1, XXXVIII, Part 5, 953, hereafter cited *O. R.*

[29] *Advance and Retreat*, J. B. Hood's post-war post-mortem, (New Orleans, 1880), p. 20; General Hood had this to say of Archer:

" On the 7th of March, 1862, I followed up the movement with my regiment back in the direction of Fredericksburg; en route, and, greatly to my surprise, I received information of my appointment as Brigadier General, and of my assignment to the command of the Texas brigade. General Wigfall, if I remember correctly, had been elected to the Senate, and regarded his services more important in that chamber than upon the field. This promotion occasioned me some annoyances, as Colonel Archer, who commanded the Fifth Texas, and to whom I was warmly attached, ranked me by seniority. He, however, came to my tent, spontaneously congratulated me upon my advancement, and expressed his entire willingness to serve under me. He gave proof of the sincerity of his professions by a subsequent application to be transferred to my division, after I was appointed Major General, and he was promoted to the rank of Brigadier. Moreover, some years later, when I assumed the direction of the Army of Tennessee, he applied for orders to report to me for duty. He was not only a fine soldier, but a man of sterling qualities, and whose nobility of character was unsurpassed."

[30] *O. R.*, Series 1, XLII, Part 2, 1189.

[31] *Ibid.*, p. 1274.

But time was running out for General Archer. As his letters only barely indicate, Archer's physical condition had been much weakened by his imprisonment. On October 16, he requested permission to go to Richmond on business, stating also that he was " for the last two days & still being too unwell to perform any duty requiring physical exertion." Eight days later James J. Archer was dead. On Monday, October 31, 1864, the Baltimore *Sun* ran the following brief notice:

Died at the residence of General Joseph E. (sic) Anderson, in Richmond on Monday night, Brigadier Gen. James J. Archer of Maryland. The Enquirer says:

Brigadier General J. J. Archer, taken prisoner at Gettysburg while leading his brigade in the thickest of that bloody fight, returned to the city only a few days ago, after a long and debilitating confinement on Johnson's Island. Though exchanged because sick, he persisted, against the earnest protestations of friends, in going at once to the front. The result was that in a few days he was compelled to abandon his post of duty for which his enfeebled constitution utterly unfitted him, and reluctantly seek, in the retirement of the home of his friend, General Joseph R. Anderson, of Richmond, a more fitting abode for a worn-out invalid. Though kind friends and skillful physicians ministered to his wants, all proved unavailing, and he breathed his last on Monday night.

To attempt to evaluate the career and personality of a man dead now for almost a century would seem to be a pointless undertaking. Glimpses of Archer's worth to the Confederacy have been seen in the comments, some already mentioned, of his comrades in arms, some of whom survived the war, and fewer of whom recounted their experiences.

One such comrade, Captain John Hampden Chamberlayne, writing to his mother, Martha Burwell Chamberlayne on December 17, 1864, expressed well what so many others felt:

Gen. Archer's death also shocked me much. He was a noble gentleman. Did I not tell you of his fine courtesy in searching for you in R^{d} to pay you a visit as my mother, mother of his friend. In his warm heartedness he annihilated all the distance between us in age & rank. Passing through R^{d} hurriedly to join the Army he found time to search for you. When I think of the men who have fallen I sometimes almost think we would all better follow.

The euthanasia of so many glorious hearts makes life almost disgrace to who survives.[32]

Mrs. Chesnut in Columbia took note of General Archer's passing, too:

Tom Archer died almost as soon as he got to Richmond. Prison takes the life out of men. He was only half-alive when here. He had a strange, pallid look and such a vacant stare until you roused him. Poor pretty Sally Archer: that is the end of you.[33]

And that would have been the end of General Archer, had not these letters been treasured and saved by members of his family. Since the publication of the first part of this series, seven additional letters have been uncovered by descendants. Through the courtesy of Mrs. John Potter Archer of Bel Air, Md., they have been copied and added to the material in the Maryland Historical Society. Six of these have been included in this part, viz. the letters dated 8 July, 1863; 20 September, 1863; 29 September, 1863; 12 April, 1864; 26 April, 1864; and 1 May, 1864. The seventh, dated 1 March, 1861, is printed at the end of the article. For the inclusion of these letters, and other favors, the editor is very grateful.

Fort Delaware
3 O'c P. M. 8th July 1863

Arrived here at day dawn Sunday morning Am comfortable as could be expected in crowded quarters which receive all the odors of an extensive privy through windows where the fresh air might have been expected to come

Genl Schoepf showed me a very nice suite of apartments which he told me that I & the field officers with me would occupy — As we do not occupy them, I suppose he only wished me to know that I might be more comfortable if he pleased — It makes little difference to me however since, if I must be a prisoner while the great struggle is passing outside, small matters like the relative comfort of this or that particular prison seem inexpressibly small

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[32] C. G. Chamberlayne, *Ham Chamberlayne — Virginian. Letters and Papers of an Artillery Officer in the War for Southern Independence 1861-1865.* (Richmond, 1932), pp. 298-299, hereinafter *Ham Chamberlayne — Virginian.*

[33] Mary Boykin Chesnut, *A Diary From Dixie*, p. 343.

I shall not suffer the want of exercise or air or any of the unwholesome things of a prison to affect my health or temper and with the blessing of God I will return to the army stronger & better than I left it — I have not yet been able to get a blanket, but will before you could send it to me — I had a good view of Mother Mary & Nannie & little Henry at Fort McHenry [34]

Ever affectionately
J J Archer

Mrs. A. Archer
47 McCullough St.,
Baltimore
Maryland

Ft. Sandusky, Johnson's Island, near Sandusky Ohio 28th July 1863

My dear Mother. — I received a letter from Henry 15th & from Mary 18th — I also received (besides the vest trousers & under clothing for self & friends at Ft. McHenry) 20$ which you sent throug Genl Morris & which he sent through Genl Schoepf — I also received a box of medicine writing paper &c from Mary which I got after I had gone aboard the boat on my way from Ft. Del. here on the 18th inst.

I wrote to you that morning telling where to direct your letters but have not heard from home since — We are much more comfortable here than we were at Ft. Del. having 12 acres of ground for exercise included in our prison limits — with those of Morgans Men [35] who came in this morning there are about 800 Conf.dte

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[34] As this letter indicates, Archer had been taken from Gettysburg to Fort McHenry and then to Fort Delaware. The "view" he had of his mother and sisters was the first since the winter of 1857-1858 when he had returned to the East on leave, and would be the last "view" he would ever have, Archer Ms. Md. Hist. Soc.

Archer and a large portion of his brigade had been captured at the very outset of the fighting on July 1, 1863. For an account of Archer's brigade, see the report of Lt. Col. S. G. Shepard, 7 Tenn., *O. R.*, Series 1, Vol. XXVII, Part II, pp. 646-648. Of 1048 men engaged at Gettysburg, 677 were killed, wounded, or captured.

Colonel Birkett D. Fry, Archer's old friend, who succeeded to the command of Archer's brigade after Archer's capture, was subsequently wounded in Pickett's charge. In speaking of the part played in that famous movement by Archer's brigade on July 3, Fry wrote: "All of the five regimental colors of my command (Archer's) reached the line of the enemy's works, and many of my men and officers were killed or wounded after passing over it." *S. H. S. P.*, VII, 93.

[35] On July 26, 1863, General John Hunt Morgan surrendered his command to an Ohio militia captain near East Liverpool, thus ending the Indiana-Ohio raid begun on July 2 at the Cumberland River crossing near Burkesville. Of 2400 Confederates who participated in the raid, fewer than 400 escaped. Cecil Fletcher Holland, *Morgan and His Raiders*, (New York, 1942), pp. 225-248.

officers here – we spend our time visiting from one block of quarters to another much after the manner of life at the old Va. White Sulphur Springs – *Many of the officers have no money or change of clothing having no friends in Yankeydom to supply them* – those who have can get whatever they want – Where is Bob? – Send him a small hand-trunk with underclothing & a blanket shawl long enough for a blanket. Send me blanket shawl hdkffs & socks – I have got coat trousers boots &c from Wiley & Reynolds late of Cecil Co (Sutlers) will give them a draft on you for them – No visitors come here except by permission of sec. of War or Commissary Gen[l] of Prisoners – Except uniform everything including money can be rec[d] by prisoners through Maj. Pierson Com[dg] Ft. Sandusky – Letters must pass through him – they are read before we get them. I am allowed to send only a half sheet

Affectionately

J J Archer

Johnson's Island, near Sandusky
Ohio – 15th August 1863

My dear Nannie – I have received Nannie's letters of 6th & 7th Aug. Mary's of 29th July & 10th Aug. also 3 boxes – the contents all right & well selected only it is hardly worth while to send *rice* & *crackers* so far by *express* I also received Henry's draft through Maj. Pierson who keeps all money sent to prisoners, who pay for whatever they buy, by orders on him – How can I communicate with Bob – where is he & to whose care must I write & how with George Williams – George Lemmon is here & well – I received yesterday a very kind letter & a box of books and an enquiry whether any other commodities were allowed to be sent to prisoners, from Mrs. R. G. Breckenridge the wife of my friend Dr. B. – also messages to the same effect from Mrs. Anderson and Mrs. Adam's ("'nee'" Throgmorton) of Louisville Ky – I am happy to inform you that I have no use for the flaxseed you sent me but have found others who wanted it – My health is perfect in every respect – Col. Humphrey a neighbour & friend Jas. Archer of Miss. is among the prisoners here. – Ascertain from Bob & write to Miss Torrence whatever he knows of Bob Finley – She has heard that he said Finley was in the last stage of consumption & is very sad about it I was very glad to get the lemmons for some sick prisoners here – I received a letter from Mr. Torrence informing me that Mrs. T. had written to you & also to her relatives in Pa. in relation

to Bob & another letter from him asking inteligence of Bob Finley — but his letters contained no word of greeting from Mrs. T. which is explained by your letter informing that she is a *war* woman. I write to Henry to-day — With best love to our dear mother & all at home in which word I say again that Shamrock & Cedar Hill & Rockland as well as Rock Run are included

I am ever faithfully
& affectionately yours
J J Archer

Johnsons Island near
Sandusky Ohio — 15th Aug. '63

My dear brother

I have received your kind letter together with the draft — Maj. Pierson Keeps all money belonging to prisoners & we pay for our purchases by orders on him — There are about 1600 prisoners here of whom about 1200 are officers including very many most inteligent & agreable people — our quarters consist of 12 buildings within an enclosure of 12 acres surrounded by a high fence — the guards never come inside the enclosure except on special business — and except that we are required to put out lights at tattoo (9 O'c P. M.) there is scarcely anything within the limits to remind us we are prisoners — The time of course hangs heavily — and I am painfully anxious to be where the work is going on — but I dwell on such thoughts as little as possible and seek to amuse myself & help to amuse others with talk & cards & back gammon & every kind of game of ball & everything else that idle people find to do except mischief which there is no opportunity for — I have read novels here until I am sick of the sight of them — Mr. Shamrock is I am afraid a little imprudent in the expression of his appreciation of blessings of the best & freest government in the world — You had better caution him on the subject if you can take that liberty with him — Maj. Pierson unlike Schenk & Morris & Schoepf seems desirous to interfere with the prisoners as little as is consistent with their safe keeping

Give my love to Mary & all her sweet pretty girls & brave manly boys — remember me to Garret, McHenry, & all our Harford friends

Affectionately
Yours
J J Archer

Johnson's Island Aug. 28th '63

My dear Mary

I am sorry I should have been remiss enough about writing to cause uneasiness at home — There is no pleasure in writing when letters must be read by strangers — it becomes a disagreeable & even difficult task — My neglect was hardly sufficient however to require Nannie to write on the subject to Major (now Lt. Colonel) Pierson — He sent me her letter to answer for him — I had written to Henry & Nannie about 17th inst — I received 2 drafts from Henry — 3 boxes at one time & at another one box containing oysters & handkerchiefs Recd Nannie's letters of 18th & 22nd & Henry's of 8th & 21st — Have not had a line from Bob or George Williams or O. H. T. and dont know their address — I wrote you that I was entirely well — It is the first time I have been in perfect health since the attack of dysentery I had in Aug. 1861 in Richmond

I know nothing of Mr. Shackelford — Lt. Col. Shackleford of 1st Ten. rgt. was killed at Gaines Mill June '62 — What Mr. Shackleford is it you want to know about? — With love to mother & all

J J Archer

Johnsons Island
15th September 1863

My dear Nannie

It has been more than a week since I received a letter from home — I have received Albert's dated 7th — I directed Sister H.'s to Perryville — was that right? Everything is going on pretty much as usual —

I dined out (not outside of the prison) with the Mess of Col Green who had received a present from some friends near Chicago of grouse Catawba wine &c — To day I dine out with Lt Col Lockhorn's Mess which has just received a box of good things from Mrs. Reyburn to whom he desires to be kindly remembered — These little dinner parties are of frequent occurrence here — So many Southern officers having friends or relatives in the North. Say to Mrs. Reyburn that I don't think more than a *dozen* jackets trousers & shoes will be required here at present — the underclothing *will* — George Lemmon Maj. Hall,[36] Hollingsworth, & Goldsborough [37] are

[36] Major W. Carvell Hall of Baltimore, serving on the staff of General I. R. Trimble, C. S. A., was imprisoned with Archer following his capture at Gettysburg, July 3, 1863. Born May 10, 1833, he died 14 April, 1879. Dielman File, Md. Hist. Soc.

[37] Major William Worthington Goldsborough, of Frederick County, was captured at Gettysburg having been wounded while in acting command of the Second Maryland Infantry, C. S. A.

well — I have met Capt. Ross of General Beall's Staff — he is a nephew of our Aunt Margaret of Miss. his home is near that of our relatives the Chamberlaines Archers &c

Johnsons Island
20th September 1863

My dear Mother

I received Mary's letter of 10th September and Nannies & Henry's of 13th Sept. Col. Pierson received Henry's draft for use of the Prisoners — As I had appropriated more than that amount to the same object I will have to take a portion of it for my own use. Say to Miss Reyburn that no jackets or trousers are allowed here except grey — Lemmon is well, let his Mother know it as his correspondence has been stopped & she may become uneasy about him — I look in every batch of prisoners that arrives for Bob & George, always tell me of both of them & of Col. Fry — Let Bob know that Col. Christian is here who as well as the officers of my brigade make frequent enquiries for him. —

With love to all
Affectionately Yours
J J Archer

I heard that Col. R. M. Powell of my old 5th Texas Regt. died in Balto. of wounds received at Gettysburg — If he should be living & a prisoner near Balto. I beg that you will show any kindness in your power [38]

After the war he worked on newspapers in Winchester, Va., Tacoma, Washington, and Philadelphia and authored the volume — *The Maryland Line in the Confederate Army 1861-1865*. Dielman File, Md. Hist. Soc.

At his death in 1901 in Philadelphia it was reported that he had told his wife; "should the end come, don't bury me among the ——— Yankees here, send my body to Broad-street station, and ship it to Winfield Peters, Baltimore."

He is buried in Loudoun Park Cemetery, Baltimore. *S. H. S. P.*, XXIX, 243.

[38] On September 21, 1863, Major Y. H. Blackwell, a paroled Confederate writing from Washington, Ark., addressed James A. Seddon, Secretary of War: "I was requested by Brigadier-General Archer, from Maryland, now a prisoner at Johnson's Island, to forward you this communication. I have just returned from prison there, having been paroled, and was told by him to say to you that he would not sign his name to the communication for fear of discovery in case it should be found on my person."

The enclosure which follows indicates that Archer was spending at least a portion of his time thinking of escape. (The failure of the plan to free the prisoners on Johnson's Island has been touched on in *S. H. S. P.*, XIX, 283-289. In the plan as recorded by Captain L. W. Allen, General Archer was to have been one of the four corps commanders, the whole organization to be under General I. R. Trimble of Maryland.)

Johnsons Island
29th Sept 1863

My dear Nannie

My health continues good — received your letter of 20th inst. one day last week — Has Miss Reyburn recd. mine yet

I have learned that Colonel R. M. Powell of the 5th Texas regt. is at Fort McHenry convalescent — Please ascertain if you can do anything for him

Lemmon is well — We hope to be exchanged soon — will try to see you when we are — My friend Genl Hood is reported killed at Chattanooga — don't believe it he has been so reported after all the battles — remember me affectionately to all friends — When did you see Miss Mary Perine — how is she — How are the Williams'

Always tell me whatever you know of G. A. Williams & Bob —

Yours affectionately
J J Archer

Johnson's Island
4th October 1863
Sunday night

My dear Mary

I received Nannies letter of 25th Sept. — Bob arrived Wednesday night about 9 O'c — I had him brought to my room where he staid with me that night — He messes with me but sleeps in a less crowded room with some of his old friends of the 55th Virginia regt. — He is quite well and inasmuch as he was no longer permitted to see any of you at Ft. McHenry would rather be here than there. Col. Powell of 5th Texas arrived at the same time completely recovered from his wounds and Col. Fry looking better than I have seen him for a long time

The sisters of Genl Beall [39] & Capt. [ ]kner and Capt. Wash-

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" We count here 1600 prisoners, 1200 officers. We can take the island, guarded by only one battalion, with small loss, but have no way to get off. A naval officer might procure in some way a steamer on the lake and with a few men attack the island and take us to Canada. C. C. Egerton of Baltimore, would, I think, furnish a fitting crew to one of our naval officers who carried your indorsement to him, and would give valuable advice regarding how to get the men armed in steamer, &c. There is no truer or more daring man in our service, and he has a large body of men sworn to obey him and help us. Lieut. George Bier or William Parker are suggested " (*O. R.*, Series II, VI, p. 311).

[39] General William Nelson Rector Beall, a graduate of the United States Military Academy, entered Confederate service about the same time as Archer, served under General Van Dorn in Arkansas and was promoted brigadier on April 11, 1862. He was captured at Port Hudson, July 9, 1863, *Generals In Gray*, p. 22.

ington's [ ] other have been here and allowed [ ] see them this week — I suppose they would not have come & that their officers would not have desired if they had been required to take the oath. I can not bear to think of the horrible tyrany practised in Maryland but I always knew it would come if none resisted in the beginning.

Yours affectionately
J J Archer

[letter torn]

[on back of 4th Oct. letter]
Johnsons Island
14th October

We have received the box all right except two or three *small* jars broken — have received letters from Henry & Nannie of 2nd Oct. & from Nannie of 9th —

A Lieutenant of the Texas Cavalry the same Company in which Stevenson Archer is arrived here (a prisoner) a few days since — Stevenson & he were at Dr John Archer's in Louisiana a short time before his (the Lt's) capture — Stevenson was well — Give this information to Cousin H. with my love — We entertain strong hopes of a special exchange — It is very hard to be kept here idle while the victories which will illustrate the history the country are being fought by others

Bob & George L. are well

Ever my dear Sister
Affectionately
J J Archer

Military Prison
Johnson's Island
23d Oct 1863

My dear Nannie

Your letter of 17th Oct. has just come — Bob & I are both well we are in the same mess & he stays in my room throughout the day, when we are not out together — I am sorry I have not been more punctual about writing but I know that you all know it is from no forgetfulness or want of affection. I never forget you, if I always remembered you in the midst of all the excitement of the war I am not likely to forget you here & now, give my best love to our mother & all our friends &

Ever My dear Sister
Affectionately Yrs
J J Archer

Military Prison
Johnson's Island O.
1st Nov. 1863

My dear Mother

I have received Nannie's letter of 25th ult°, inclosing draft for 50$ — Have heard nothing from Mr. Reyburn, Mr. Chrichton wrote me that he would send clothing to me for prisoners & I got a letter from J. P. Williams saying that it had been sent, It has not arrived — Nearly every mail brings me some kind token from the relatives of my friends Breckenridge and Wickliffe & other good ladies in Kentucky whom I have never personally known — Today I received a very kind letter with tender of services from Capt. H. Douglass U. S. A. — an old comrade in W. T. — who having been wounded at the battle of Murfreesboro, has been for some time on duty as mustering officer at Cleaveland Ohio — I see no prospect of a speedy exchange when it comes I will ask for a parole for at least a few hours with you as I pass through Baltimore. My dear mother I beg you will not suffer yourself to be cast down by this cruel separation — I have an abiding faith, which the darkest hour has never dimmed, that we will both be spared to meet at your happy fireside, after this war is over, and all my hopes, which ever cling to my own people, shall have been fulfilled. Do not despair if we fail this time Be of good faith, & trust fearlessly to that Providence, which has already preserved us through so many dangers — Bob is well he is now living in the same room with me, so that we are almost always together he sends much love — He wants you to send him three soft cotton undershirts such as he has always worn — & as many more for me — He wants Henry to select & send him some smoking & chewing tobacco — You may say to him also that although I keep on trying to break myself of chewing & smoking & in spite of continued failures do not despair of ultimate success I will probably use a few pounds of the weed before I am quite done with it

— Neither Mrs. Reyburn's nor Mr. Crichtons box has yet arrived

. . . . . .

— 2nd November '63 — Have just received Nannie's letter of 29th ult.

Ever affectionately
Yours

J J Archer

While I remain here you need not limit yourself to any particular number of pages in writing

. . . . . .

In haste I send this letter I suppose this is Marys Match tray

Yours
Nannie Archer

All Well

Mrs. A. Archer
Balto. Md.

Johnson's Island
2nd Jany. 1864

My dear Mother

The wisdom of your great and magnanimous rulers has again restricted us to a single page in writing —
— They have long since forbidden the sutlers to sell to us anything except stationary & tobacco. This is hard upon those of the sick who require other diet than the army rations afford — Formerly we were allowed to purchase from the sutlers, & those who had money furnished the sick with whatever was necessary for them — They have not as yet stopped the delivery of boxes of provisions sent by friends but may do so at any time — Bob is well & in as good spirits as our confinement will permit anyone to be — Genl Terry who was at my room a few days ago said he thought we would soon be exchanged (which I do not think) and advised me to write to Genl Heintzelman for leave to visit you on parole during my passage through Balto. & offered to forward my letter — I have written — I do not like Nannie's proposition for you and her to go to Mr. Staunton on the subject — George Lemmon is well & sends regards — Tell N. that some of her letters are a little imprudent —

Ever & most affectionately yrs.
J. J. Archer

To
Mrs. Ann Archer
Baltimore, Md.

Johnsons Island, Ohio
Jany. 4th 1864

My dear Mother

We received the box of eatables, caps & gloves that you sent a few days after Christmas — The first chance you have send me a pair of gloves like those you sent last. I gave mine away

Major John A. Blair of Miss. and our messmate, wrote to Mrs. Reyburn to send him an overcoat with a cape, to be paid for on delivery, we told him to write to her as she had kindly offered to do anything she could for our friends ask her if she received his letter –

We are well but very anxious to be exchanged – Love to little Henry relations & friends and believe me as ever

Yr. affectionate son

Johnson's Island
6th Feb. 1864

My dear Mother

It is nearly three weeks since I have received a line from any one at home or even from Maryland–I cannot believe that no one has written and am forced to the conclusion that the letters have been suppressed – Either for some intelligence considered inadmisable or perhaps because the letters have been too long perhaps & would be surer to limit your letters to a single page as my own are required to be – I have had a slight attack of dysentery since I last wrote from which I have entirely recovered – G. L. & Bob are both well

Did you see Col. D. Howard Smith – I did not know when he left here that he would stop a day in Baltimore or would have asked him to call on you – I have rec'd kind letters from Cordelia & Nancy W. which will answer soon – am only allowed to mail one letter at a time – The next time you send anything send a ½ doz. towels – We can purchase here nothing but stationary & tobacco

I wrote to Mr. Crichton Bowley's Wharf but fear he did not get the letter – Drop him a note that I will be glad if he will send the articles that they are much needed by the sick

With love to all

Affectionately Yours
J. J. Archer

Lt. Hicks was kind enough to call & say that he had seen you & to tell me how well you looked.

Johnson's Island
13th Feb 1864

My dear Mother

We are in daily expectation of leaving Johnson's Island for Point Lookout, Fortress Monroe or some other place. It is not certain

whether Bob & I will be allowed to travel by the same train — I have asked that he & Lemmon should accompany me — My room mates are Brig. Gen J R Jones Lt. Col. Payne Va. Cav. Lt. Col. George 1st Ten. Regt.[40] Bob. and until last Tuesday Maj. Blair & Lt. Chamberlayne,[41] the two latter have left the Island, and George Lemmon is now with me — I have just received a very kind letter from Mrs. Breckenridge in which she expresses her regret that she cannot send you any better photograph of her husband than the Richmond artists furnished & is unwilling to send that —

Bob's overcoat arrived safely also the box of provisions & cordial. — the jars of pickles and two bottles were broken as all the thin glass vessels you send are apt to be.

Ever affectionately Yrs

J. J. Archer

Johnson's Island
26th Feb. 1864

My dear Mother

Mary's letter of 19th Inst. was duly received — I hope that you & Nannie will abandon the attemp to obtain permission for an interview with us, unless you could do it through third persons — As for myself I do not care to see you unless our interview could be private — Our separation has been too long and the circumstances of our position too full of all that is affecting for our meeting to be witnessed by strangers even, much less by my enemies. Bob has had a severe attach of dysentery since I last wrote but is now quite well although still weak from its effects — George Lemmon is about as well as usual I think I mentioned that he has been one of my room-mates ever since the late batch of prisoners left. My friend Col. D. Howard Smith of Ky. who left here on parole of 15 days writes back that he will be several days in Balto. en route to Ft.

[40] John Robert Jones of Harrisonburg, Va., was born in 1827, and educated at V. M. I. He served in the Stonewall Brigade until his appointment in June, 1862, to command of a brigade in Trimble's division. He was captured at Smithburg, Tennessee, July 4, 1863, *ibid.*, p. 165.

William Henry Fitzhugh Payne, Lt. Col. of the Fourth Virginia Cavalry, was also a V. M. I. graduate, native of Virginia, who was appointed brigadier general in November 1864. He was wounded and captured three times during the course of the war and spent more than fourteen months at Johnson's Island. He died in 1904, *ibid.*, 230-31. Lt. Col. Newton J. George was second in command of the First Confederate (Tennessee) Regiment in Archer's brigade. *Military Annals of Tennessee, Confederate* (Nashville, 1886), 129.

[41] Major J. A. Blair "of Miss." and John Hampden Chamberlayne of Virginia had been roommates for eight months in various prisons at the North. *Ham Chamberlayne — Virginian*, p. 215.

Monroe I would like you to see him, enquire for him at Rev. Mr. Bullock's – Mr. Helm Chaplain of 1st Ten. Regt. left today and will call on you if he can – I gave him a request on Miss J. Harman Brown for clothing enquire of him if he got it I know that he is badly off in that respect –

Have a pr. of Scotch walking shoes made for me at Hendersons – a half inch longer than the foot & full & roomy over the toe – one white & 4 colored X brand shirts – collars attached – & a pr. slippers – Thank Mary Perine for a very pretty cap

Yrs & C

J. J. Archer

Johnson's Island
8th March 1864

You need not use up any part of the short page you are limited to in saying how much you want to see us – It is not after so many years of such constant affection as ours that such an assurance can be necessary

My dear Nannie

I wrote to Mother two days ago that I had not heard from home for three weeks but yesterday both Bob & I recd letters of 28th and 3rd inst & another today – My last was written on foolscap but as an order appeared yesterday limiting us to a single page of ordinary letter paper, she may not have recd it. I hope you will not again suffer yourselves to be excited by any rumors you may hear of our exchange removal or anything else – at all events do not allow them to prevent your doing whatever you would otherwise have done – Miss P's message has been delivered to R. S. Bell – G. L. & Bob are well –

I have never rec'd but 2 Nos. of Blackwood would like to have it – Send me three (bandana) colored silk hdks – Give my best regards to Miss M. Perine to Miss Emma Brent to Mrs. Reyburn & Mrs. G. H. Brown and to all friends who are kind enough to enquire for me – Jog Mary about writing – Ask John Ann to write me some account of her visits to her married sisters &c With love to Mother & all her children

Ever affectionately Yrs

J. J. Archer

Johnson's Island
18th March 1864

My dear Mother

We received yesterday the barrel of provisions you sent — This evening we had quite a merry little supper party in my room consisting of the inmates of my own & Genl Trimble's rooms & Capt. Davis of the old 9th Infty now of Mississippi Cav. — The spiced round was duly honored & the hope of speedy exchange made our party unusually cheerful — I would consider myself fortunate to be at Point Look-out — Would be certain then that at least I would have an opportunity of seeing you — Lemmon, Bob & Col. Fry are well — Fry dined with me yesterday — He is very anxious to go to Pt. Lookout in the hope of meeting his wife there. Give a great deal of love to Henry Kate Sister H & their families — Say to Mrs Reyburn that I am only waiting to write to her until I know whether her box sent to Blair & me is safe — Edward Beatty of Montgomery Co. is dying in hospital we know that he cannot live to see his Mother who has been sent for —

Good night. Ever dear Mother
Affectionately Yrs
J. J. Archer

Last summer I wrote to Uncle Herman — Lapidum P. O. did he get my letter

Johnsons Island
12th April 1864

My dear Mother

I neglected to write twice when I would otherwise have written, because Col. Fry & Major Hall were going through Balto. & could give a more satisfactory account of me than I could give myself.

Maj. Hall left day before yesterday on parole to Richmond for exchange — He promised to call on you if possible (I have heard of several paroled officers beings arrested for visiting). I have very little confidence in the exchange rumors & believe that no one will be exchanged except on special exchanges where they have friends who will take the trouble to work for them — Bob & G. L. are both well — I am recovering from an attack of sore throat

With love to all
Yours affectionately
J J Archer

Johnson's Island
21st April "64.

My dear Nannie

I have been remiss about writing only because I have had opportunities of sending my love by Col. Fry & Major Hall — The invalids (150) leave tomorrow — My friend x room-mate Col. Payne who is one of them will visit you if he can I am almost sorry that Bob & I cannot be included amongst the sick — I don't believe we will be exchanged or paroled — It is wonderful that I have kept my health here, but attribute it to the hope of an exchange which I have always until now preserved Yrs Affty J. J. Archer I gave Col. Fry a ring for you made by Captain Davis whom you perhaps remember as an officer of the Old 9th Inf. — he is a nephew of the President I also gave him a memorandum of what I would like a sack coat — gray merino cloth — something that won't fade — & a counting house portfolio — not to be sent to me until further order — the coat without buttons or button holes but with frogs & loops — Picket was said to have been engaged to Miss Symington — He was married before she was, but if it is true that she refused him to marry Janney she deserves to hear Mrs Janney instead of one of the best and most gallant and most distinguished officers and gentleman in America. Tell Kelley that I am no longer than when he measured me last

Yrs Affty

J. J. Archer

Johnsons Island
26th April 1864

My dear Brother —

We have got so accustomed to the rumors of exchange that they have ceased to furnish any excitement — I have no hope of any such event as a genl. exchge. and but very little of a special exchge. — My friends who might be able to do anything for me in the South not being in Richmond but busy in the field & fondly imagining that the special exchanges are properly made & not by the mere favor of the Commissioners on the unfortunates friends at the Capotal — I could bear my confinement while I had hope from day to day of exchange but now it is becoming intolerable — If I were exched. today I would already have lost a whole year of the most critical period of the war — give my best love to all yr.

family & remember me to Uncle Herman – A. L. I. Fernandis & all our friends –

Afftly Yours

J J Archer

I would like to have photographs
of yr.self & family

Johnsons Island
1st May 1864

My dear Mother

I received Nannie's letter of 25th ulto. Yesterday the barrel of provisions unannounced reached me a day earlier – I am very well supplied with provisions now – & it will not be necessary to send any more for some time – We are again allowed to purchase from the Sutler but at more than double the outside market prices – Do not keep yourselves excited by rumours of exchange – I can see no prospect of it until next winter & not then unless at the close of the campaign we shall have a large excess of prisoners – Our imprisonment was hard enough to bear during the inactive winter months – but now that the campaign is open it is utterly intolerable – Tell Kelly that I have not changed since he took my measure – the clothing need not be *sent* unless I write for it

Ever affectly

J J Archer

To
Miss N. H. Archer
47 McCullough St
Baltimore
Maryland

Johnsons Island, 4th May 1864

My dear Nannie – Yours of 28th May was rec'd. – I hope what you have done may be successful but anxious as I am for transfer and exchange, I would not have you do it again, for that or any other *consideration* – and sensible as I am of your unwearying efforts to serve me, as shown by what you write, I have never had a letter from you which pleased me less – I am greatly as touched that Mother consented to the trip to W. – I have no doubt of the willingness of H. M. to serve me but don't believe in his influence – His brothers Sam & Robert were just pretending to that sort of influence, and used it as a means of acquiring influence with others, whom they hum bugged into the belief that they had done more

for them than any one else could have done — They were (I think) utterly unscrupulous & unreliable. — I only know this one by my visits to him in the prison at Richmond — he may be different — but he has been a politician & a gov.t contractor — pursuits not likely to correct the family predisposition — Send me two or three hams — some green tea & white sugar & pickles —

Ever my dear sister affectionately yours
J. J. Archer

Mrs. A. Archer
47 McCullough St
Baltimore
Maryland

Johnsons Island
16th May 1864

My dear Mother — Col. Payne was not able to stop in Baltimore or would have called on you — we got a letter from him announcing his arrival in Richmond — It does not appear to me probable that I will be permitted to stop in Balto. in the event of an exchange if I should be sent on at the same time with the rest of the prisoners — I think the only chance of my being able to see you depends upon my being specially transferred to Point Lookout — in advance of any general transfer this may be made in consequence of general exchange — I am advised too by all my friends who have been transferred to Point Lookout that Point Lookout is far preferable to this place in respect to health comfort range for exercise — everything else in fact — Bob & George Lemmon continue in their usual health —

With love to all — Affectionately Yours J. J. Archer

Johnson's Island
20th May 1864

My dear Mother — I received Nannie's letter yesterday, & from the haste she seems in to send me medicines & medical advice, I judge you are a little uneasy about my health — I am happy to inform you that I have entirely recovered, & that Bob & G. L. are also well — You seem to think too that we have no physicians, or perhaps you think we are dependent on Federal Surgeons which thank God is not the case — We have at our hospital here a most excellent volunteer corps of surgeons from among our field & company officers, who have taken entire charge of the medical attendance on our sick — My own especial physician is Col. Maxwell of Florida

who at the breaking out of the war was a professor at the Medical College of Savannah Ga. a most accomplished soldier & physician — Col. W. H. Payne 4th Va. Cav., my late room-mate, recently exchanged, & who arrived at Richmond as late as the 8th inst., has been again captured & is at Pt. Lookout — Please write to him & inquire what he wants — Tell little Henry we got the big oranges with our names on them —

Ever dear Mother affectionately Yrs.

J. J. Archer

Johnsons Island, 12th June 1864.

My dear Nannie yours of 5 inst. has been recd. — It seems hardly worth while to go back to Fort Del. and last July for matters to grieve over, while the present & future are so interesting. It is not true that I had no money or change of underclothing at Fort Del. or that I had to borrow a shirt from anybody — The supply of both, which you sent me to Ft. McHenry, was amply sufficient for me, Col. Payne, Capt. Chamberlayne & Maj. Blair, until we got here, when I was able to procure, from the sutler, whatever else I required

About two weeks ago, the Federal Surgeon in charge came to my room with an order from Washington to make a medical examination of mine & Bob's condition, & report the result immediately — Our health, at that juncture, was such, that I was pretty sure he would report as I did not wish that he should — the lapse of time which has since occurred confirms that opinion, and satisfies me that your efforts to have me transferred to Pt. Lookout have failed. Col. Payne was NOT recaptured, he writes to Col. Harman from Richmond " tell Genl Archer I wish I could tell him Some hopeful news I think I see for him "

Ever & most affectionately Yours

J. J. Archer

THE AMERICAN TELEGRAPH COMPANY

36 W Dated - - Salem O 23 June 1864
Rec'd, Baltimore, - - - - 1864, - - - - o'clock, - - min. M.
To - - - - - Mrs. Mary Archer
47 McCullough

Enroute to Fort Delaware

Will enquire for you
at Marshal House Phila.
J. Archer
12 Call 122 pd 93

THE AMERICAN TELEGRAPH COMPANY

24 Dated - - Phila - - - - - June 24 1864
Rec'd, Baltimore, - - - - 24 1864, - - - o'clock, - - min. M.
To - - - - - Mrs. A. Archer
47 McCullough

Enroute to Ft. Delaware
leave at two 2 P. M.
J. J. Archer
8.25

Fort Delaware 25 June

My dear Mary — Arrived here last evening — Telegraphed to Mother to meet me at the Marshall House Phila. not knowing that there was no longer a Hotel of that name there, which I only learned after arrival at Phila — I had no doubt however that you would at least enquire if not stay at the Gerard House, which is near the site of what *was* the "Marshall" — I went to the Gerard & left my address — I remained in Phila. from 6 A. M. to 2 P. M. — I am in hourly expectation of leaving with Genls. Johnson, Gardner, Stewart & Thompson & 45 field officers for Charleston harbour[42] — Col. R. Morgan is of the party — It would be hard to find a more agreeable set of gentlemen to make a pleasure excursion with — You need be under no unusual anxiety for my safety — I consider it rather an agreeable change from the monotony of my long confinement. Bob & Lemmon applied for permission to go with me I left them both well at Johnsons Island

Ever affectionately Yrs.
J. J. Archer

[42] Major General Edward Johnson, an 1838 graduate of West Point, participated in much of the fighting in Virginia until his capture at Spotsylvania in May, 1864. *Generals In Gray*, pp. 158-59.

Major General Franklin Gardner, a native New Yorker and 1843 West Point graduate, was in command at Port Hudson where he was captured after the fall of Vicksburg, *ibid.*, p. 97.

Brigadier General G. H. Steuart was a brigade commander in Edward Johnson's division of the Army of Northern Virginia at the time of his capture at Spotsylvania, May 12, 1864. *ibid.*, 291.

Brigadier General M. Jeff Thompson of the Missouri State Guard was never confirmed in his rank by the Confederate States Senate, *ibid.*, p. xviii.

Recd. Nann's letter saying "we have just arrived at this place" but without date or any means of my knowing what place – I am deeply grieved that Mother should have taken so long a journey in vain – but we will yet meet under happier auspices

Hilton Head S. C.
30th June 1864

My dear General

Mrs. Reyburn of Balo. has requested to write you in behalf of Capt. Patterson 5th New Hampshire Regt. now a prisoner at Richmond – Mrs. R. has devoted herself to our prisoners ever since the first of the war – She says that Capt. P. has done every thing possible for our prisoners while provost Martial at Pt.Lookout & that he most kindly & courteously afforded her every facility for administering to their wants – Genl. Jeff Thompson Maj. Branch & others concur in this praise of Capt. Patterson in requesting for him every indulgence that can be afforded to him – they hope he will be selected among the first should exchanges be resumed

Very truly & respectfully
J. J. Archer

Brig.Genl. Winder
C. S. A.
Commanding Officer of Prison
at Macon Please give me any
information he may have of this officer
Jno H Winder
Br
Aug 22nd 1864

Macon C. S. M. Pris
Aug 24, 1864
Capt. Patterson has never
been in this prison – No information can be obtained here concerning him – M. Latimer, Capt. Comd. Prison

Mrs. A. Archer
47 McCullough St
Baltimore
Maryland

Hilton Head S. C. 30th June 1864

My dear Mother – Left Ft. Del. 26th inst. & arrived here last evening at 5 O'c P. M. – Had a pleasant trip the first on which I

was not sea-sick — Have been lying here at anchor ever since arrival — Do not know when or where next — I cannot express all my regret & disappointment at not being able to see you in Philadelphia. Write to Bob soon & give a great deal of love — The sack coat you sent him was too long & too large — He gave it away — send him another shorter & more closely fitting — send him also a pair of slippers & ask Henry to send him $100 — Send Bob's clothes in a strong sole-leather hand trunk otherwise they will be ruined or lost — I regret you did not send me one as well as the port-folio I asked for — I received the clothes at Ft. Del. which suited me perfectly. Write to Brig. Genl. R. B. Vance prisoner at Ft. Del. concerning Bob Finley for Mrs. Torrence's information. — 7th July 1864 — Nothing new has transpired —

Yrs. afftly.
J. J. Archer

Miss N. H. Archer
No. 47 McCulloh St.
Baltimore

July 24th — This letter was sent here by mistake
R. H. A.

Prison Ship Dragoon, Hilton Head S. C., 15th July 1864, My dear Nannie — I have just received yours of 6th inst. but not Mary's which you say was sent to care of Comodore Rodgers — better write to care of Genl Foster — We know nothing of the intentions of Genl Foster in regard to us — whenever any change occurs in our condition I will endeavor to inform you — I think that whenever another batch of invalids is exchanged Bob should be amongst them — He could easily have gone when Col. Payne went, but he was fearful, that, by presenting himself, he might keep others out whose cases were more urgent than his own — besides he was not quite willing to go and leave me — Lemmons health too is very delicate and I think his friends should make an effort to get him exchanged to a better climate where his friends can take care of him — Do not let Mother be made uneasy by what I have said of R. H. A.'s health there is no occasion for it — He was in better health at the time I left than at any time since his capture — I never expected or desired you or Mother to visit me at the Island — Neither did Bob — Neither of us would be willing for you to have come on the conditions which were exacted of some.

Ever my dear Sister, Yours
J. J. Archer

Mrs. A. Archer
47 McCullough St
Baltimore Maryland

Hilton Hd S. C., 20th July 1864 — My dear Mother I received Nannie's letter of 6th inst. but not Mary's which was directed to care of Com. Rodgers — Direct in future to care of Genl Foster — We have now been lying here three weeks, still ignorant of what next. The clothing you sent me to Ft. Del. was recd. I have two rings for Nannie one of them sent her by Capt. Davis which will forward by first opportunity. Send Bob some porter I think it will be of service to him. I am afraid and so is Bob that you may be letting little Henry's golden moments for learning pass unimproved, through a mistaken view of his health. — Now is the time for him to learn French. For the very reason that his health is delicate, he should be made to learn the more and be subjected to the better *discipline* — He need not be unduly confined, in order to learn what it is necessary he should know hereafter — the more confining studies can be alternated with fencing, riding, shooting, dancing & play in such a way as to keep him amused & interested in all and to benefit instead of hurting his health. — Remember too that he may not always enjoy the oportunity, and that his health, like his fathers, may never be any better during his boyhood, and that if he neglects now he may never acquire the habits of application necessary to improve hereafter the great natural talents that all agree in thinking he possesses. Think too that to such a mind as his, the acquisition of knowledge is not the labor that it is to a dull plodder rather a recreation — give no heed to that ignorant fogye which teaches that a boy may be injured by too much learning while he does not neglect his play & exercise — I've received the pipe tobacco &c which Mary Perine sent *me* and which were most acceptable both for their own value and as a souvenir of a very dear friend

Ever yours dear Mother —
J. J. Archer

Captain R. H. Archer
Asst. Adj't. Gen'l.
Archer's Brigade
Prisoner of War
Johnson's Island

Hilton Hd. S. C. 20th July 1864 — My dear brother — We have been here on board a prison ship three weeks & still ignorant of what

next — Anything you may want from home had better be sent to you direct — There is no more certainty of your being allowed to see our Mother in passing through than there was for me — I have written, about little Henry, all that you asked me to say to Mother if I saw her — I wrote too to have some porter sent you for the benefit of your health — I am messing with Genls. Gardner & Thompson & Cols. Duke & Morgan [43] — I had no oportunity to make any provision for the trip, but Morgan & Thompson were well provided & made me welcome to all they had — Some imagine that our journey here will ultimately result in an exchange, but I do not suffer myself to indulge in the contemplation of so much happiness — Whenever in the course of events I shall be exchanged I will spare no efforts to get you and George Lemmon — Give him my best love — Both of you take the best care of your health so that you may be able to enjoy & use your liberty whenever it may come to you. Remember me to Genls Jones & all in Nos. 20 & 7 to all the officers of my brigade and Powell's regt. I had $23 dollars transferred to your credit the day I left Johnson's Island — I wrote also from here for H. to send you

Ever my dear Bob affectionately Yrs
J. J. Archer

Prison Ship Dragoon, Hilton Head, S. C.

24th July 1864 — My dear Nannie The mail steamer came in last Thursday without a letter from you — Your letter should be directed to care of Genl. Foster — From the fact of your never writing me by "flag of truce" while I was in Virginia I concluded that you did not know you could do it. Often letters of a single page containing

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[43] Colonels Basil Duke and Richard Morgan had been captured with Colonel Morgan's famous brother, John Hunt Morgan (Holland, *op. cit.* see footnote 35).

Writing two years after the war, Duke recounted his experiences on the Hilton Head trip, and his esteem for Archer can be seen in the following:

"At last a piece of good fortune befell some of us. It was announced that General Jones, the officer in command at Charleston, had placed fifty Federal officers in a part of the city where they would be exposed to danger from the batteries of the besiegers. An order was issued that fifty Confederate officers, of corresponding rank, should be selected for retalliation. Five general and forty-five field officers were accordingly chosen from the different prisons, Fort Delaware furnishing a large delegation for that purpose. The General officers selected were Major General Frank Gardner - - - Major-General Edward Johnson - - - Brigadier-General Steuart, of the Maryland Brigade, - - - There was still another of these fortunate men — fortunate in having helped to win fields where Confederate soldiers had immortalized the title — Brigadier-General Archer was the fourth general officer. A favorite officer of General A. P. Hill, he was in every respect worthy of a hero's friendship and confidence" (*History of Morgan's Cavalry* [Cinn., 1867] pp. 501-506).

no contraband matter have always been allowed to pass — I hope Mother understands that neither Bob nor I expected or desired her to go to Johnson's Island while we were there — I was deeply grieved that I did not see her at Phila or Ft. Delaware although if they had exacted from her the same conditions which was complied with by most others who visited their friends, then I would have been more distressed than pleased to have seen her. I hope you are satisfied by this time with what I wrote about about *not* my friend (Mr. M. whom you think has influence with Mrs. S.) I firmly believe that whole tribe to be utterly false, low, unprincipled & corrupt. My health continues good, we have as yet no information as to our ultimate destination — I am sorry to learn that Johnnie suffered from her trip to Ft. Del. give her a great deal of love from me & believe me my dear sister

Affectionately Yrs.

J. J. Archer

P. S. I did not receive the letter from Mrs. Reyburn which you mentioned she had written me — I wrote as you requested from her to Genl. Winder to endeavor to secure the best treatment & the earliest possible exchange for Capt. Patterson (late provost martial at Pt. Lookout) in consideration of his humanity towards Confederate prisoners

Mrs A. Archer
47 McCullough St.
Baltimore Maryland

Prison Ship Dragoon Hilton Hd. S. C. 1st August 1864

We are assured by Genl. Foster's adjt. that the negotiations for our exchange are perfected, and that day after tomorrow we will be sent to Charleston exchanged — Joy at my own liberty is almost turned to sorrow when I think of Bob & Lemmon left languishing in prison. Do not my dear Mother any longer indulge a fear that we will never meet again

Our reunion under happier auspices, is a thing I have never for a moment doubted, and, when we do meet we will rejoice over our late disappointments, which at the time we found so hard to bear — After all, my dear Mother it would have been but a small satisfaction to have met under the espionage of a government official — Send Bob for me, photographs of all my brothers, sisters, nephews, & nieces, except those sent me by Henry & Nannie's Belle's & Alberts which I already have — also Judge Constable's & Cousin

Jno. William's and as I like to look at lovely sights – Cousin Aletia Stump's and the photos of any of my pretty friends, who are willing to send them – Send my valise to Lt. Col. N. I. George 1st Ten. Regt. to whom I lend it – I write to Bob who will explain it to him – I received only yesterday Mary's first letter together with her last dated 23rd – Write me often by *flag* of *truce*. I will avail myself of all oportunities to do the same – but it is an uncertain means of communication & neither of us must be anxious if we do not often succeed in getting our letters – In spite of many & great annoyances & discomforts my life as a prisoner, & even on board this miserable prison ship has not been all together devoid of pleasure and my health is more complete than at any time since my first arrival at Richmond – I have learned to keep the bright side of all circumstances constantly in sight, to dismiss anxieties from my mind, & to contemplate no misfortune that is manifestly without a remedy – and I go now to the scene of my duties & labors full of the brightest hopes and with the strong confidence that our long deferred meeting will not be very much delayed

Ever dutifull and Affectionately Yrs

J. J. Archer

Miss N H Archer
47 McCulloch St.
Baltimore
Md

Near Petersburg, Va.
17th Sept. 1864

My dear Nannie

I have received several letters from home since my exchange – I have not heard since I was at Johnson's Island from Sallie Murray, but I was very glad to hear of my friend Brown and also from Shipley. I spent two days very pleasantly with my friend & old classmate Matheson – I had also very kind invitations from Mr. DeSaussure & Aiken & others – I spent also two days at Genl. Chesnut's in Columbia; and travelled from Columbia with Miss Warring in my charge. She is an exiled daughter of Col. Warring of P. G. Co. Md. whose property was confiscated & himself imprisoned some 18 months ago. I remained in Richmond some seven or eight days getting my servants, baggage etc together and preparing to join Hood, who had applied for me & to whom I was under orders to report – but finally having the choice offered me, decided to remain with Genl. Lee. I was governed in my

decision by consideration connected with my staff. Bob & Lemmon being prisoners & Oliver not well enough to accompany me I thought I might perhaps be able to help them all by remaining here.

Ever affectionately Yrs
J. J. Archer

Mrs. A. Archer

Near Petersburg Va. 4th Oct. 1864

My dear Mother

I have not had a very great deal to do yet since my return to Va. Have been engaged in but two unimportant battles — O H Thomas' health does not permit him at present to be with me he is in Richmond — Geo. Lemmon made me a visit about a week ago — He is not yet exchanged and has gone to Campbell County among his relatives there. George Williams is with me well and in good spirits. I wrote you before that my friend Brown had been heard from also Mr. Shipley —

I have been much gratified at receiving frequent letters from home per. flag of truce

Ever affectionately Yours
J. J. Archer

Major John D. Keiley
A. Q. M. & Chief Qr. Mr. Walker Brig

Hd Qrs Archers & Walkers Brig
5th Oct 1864

Major

You will please report to me without delay, in person, unless some emergency should prevent, in which case you will report by letter, informing me of the cause of your neglect to furnish at this point forage for the horses of the mounted officers of Walkers Brigade

If however you should be unfit for duty by reason of sickness, which, (although I have not been informed of it) I presume to be the case from your long continued failure to report to me & the gross neglect of the duties of your department — You will at once inform me of the fact in order that the responsibility may rest where it ought

Respectfully
Your Obt. Servt
J. J. Archer
Brig Genl
Comdg

Near Petersburg Va
5th Oct. 1864

Robert H. Archer
AA Genl
My dear Brother

I am sorry to say that I see no immediate prospect of your exchange although I am not altogether without hope. I will spare no pains to effect it if it is possible. Lemmon made me a visit about a week ago. He is not yet exchanged & has gone to Campbell County among his relatives. I have been in but two unimportant engagements since my arrival. Geo. Williams is with me *as before* — Tell * Herbert [44] his boys are with me and are the best in the world. Remember me kindly to all my friends at the Island — I think I told you that I lost my memorandumbook after my arrival at Charleston it will explain why many messages with which I was charged to friends of prisoners were not delivered

With much love
I am my dear brother
Ever truly yours
J. J. Archer

* Commands the Maryland Regt.

Henry W. Archer, Esq.
Baltimore
Md-
My dear brother

I send you Jim's last letter to me, tell Mother I will send the one she sent to me some other time I cannot write

Yr. afft. brother R H Archer

Col. W. H. Taylor
A. A. G.
A. N. Va.

Hd Qrs Archers Brig
16 Oct 1864

Colonel

Having been for the last two days & still being too unwell to perform any duty requiring physical exertion — I respectfully ask

[44] Lieutenant Colonel James R. Herbert, a veteran officer of the 1st Md. Regt., C. S. A., had been in command of the Second Maryland Infantry up to the time of his wounding and capture at Gettysburg, Dielman File, Md. Hist. Soc. The Second Maryland became a part of Archer's Brigade in July, 1864, and remained brigaded with the Tennessee and Alabama regiments of Archer's old command for the rest of the war. Goldsborough, *op. cit.*, p. 133.

48 hours leave of absence to go to Richmond to transact important business with a gentlemen who is about to go beyond the limits of the Confederate States.

Respectfully
Yr. Obt. Servt
J. J. Archer
Brig. Genl

Hd Qrs Archer Brig
16th Oct 1864

Brig Genl Archer

Ask leave to go
to Richmond & enclosing
Medical certificate

Headquarters
Heth's Div.
Oct. 16th -64
Respectfully forwarded appl —
H. Heth
Maj. Genl

Fort Colville W. T.
1st March 1861

My dear Mother

I beg you will excuse my not writing by the last mail but really I was so thoroughly disgusted that none of all my friends & relations even wrote me a single word concerning the one all absorbing topic of interest & anxiety, "the impending crisis" & of the views of my people & the people of Maryland on the subject that I just threw down my pen after I had taken it up to write, and let the mail go.

Not that I had not been glad to receive a letter from home informing me that you were all well asking me whether I had turkey for my thanksgiving day dinner, but that the omission of any mention of this great question which will not let me sleep quietly in my bed and leaving me in the dark as to views entertained by my friends & the probable course of Maryland in the matter, seem to impute to me a dishonorable indifference to the course of events.

Every mail I am looking & anxiously waiting to see that Maryland

has deposed her contemptible governor who has not had the sense or courage to put her in a condition to assist herself — and the moment I hear that she has done her duty to herself I am prepared to cut loose everything & hurry home. —

Everything is going on here pretty much as usual — On the 22d Feb. I gave out of the Company fund a ball & supper for my company at which there were about four hundred persons including the soldiers of the company — All of them were seated at the supper table in four relays — then were furnished with plenty of liquors and kept up the dancing until 4 O'c in the morning — but I thought the best part of the entertainment was the singing by about 15 germains of the company who sang german songs during the last two hours of the ball — I was present during the whole time to see that order was preserved — & I do not believe that I ever saw more perfect decorum & good humor and fun or in any respect a much handsomer ball —

All the officers of the commission & of the garrison pronounced the men of my company the most gentlemanlike soldiers in appearance & conduct they had ever seen —

I received a letter from Henry by last mail just barely touching upon the *great question* and showing by his remarks that he has been too much occupied with the business of his profession to apply his clear head to that which is only second in importance to himself, to the salvation of his soul — He says that a hostile fanatical party is in possession of absolute power against the abuses of which there seems no security — In other words that Maryland is in a condition of slavery and if she don't feel the scourge it is only because her master is kind — and yet he says we will remain in the union — I do not recognize in this my noble generous self denying devoted & chivalrous brother —

He has not digested the events or followed out his opinions to their logical conclusions — in fact he has withdrawn himself too much from the political duties which his position demands of him or he would have thought enough on this subject to for logical & correct opinions. But I might as well be talking to the wind as to those who will not hear me until all these matters shall have been decided

With love to all

Your affectionate Son
J J Archer

EX PARTE MERRYMAN

THE centennial of the issuance of the writ of *habeas corpus* by Chief Justice Roger Brooke Taney in the case of *Ex parte Merryman* at Baltimore on May 26, 1861, was observed by the U. S. District Court in ceremonies beginning at 3:00 P. M., May 26, 1961. Chief Judge Roszel C. Thomsen opened the proceedings with the following remarks:

This very day marks the hundredth anniversary of one of the most important as well as dramatic cases ever heard in the Federal Courts of Maryland. The availability of the writ of *habeas corpus* is one of the points we often refer to in our Law Day exercises, and it seems only fitting that the Court should recognize the anniversary of the issuance of the writ in *Ex parte Merryman*.

We have therefore asked two of the ornaments of our Bar, Mr. H. H. Walker Lewis and Mr. William L. Marbury to prepare appropriate remarks.

We are honored by having with us on the Bench two Circuit Judges, Chief Judge Sobeloff and Judge Soper.

ADDRESS BY MR. LEWIS

At 2 o'clock on the morning of Saturday, May 25, 1861, John Merryman, of Hayfields, Baltimore County, was routed out of bed and arrested by a detachment of Union soldiers acting under the orders of General William H. Keim of Pennsylvania. The soldiers took Merryman from Cockeysville to Baltimore by train and then by hack to Fort McHenry, where, sometime after 8, he was locked up. The newspapers reported that Merryman, as First Lieutenant of the Baltimore County Horse Guards, had participated in the destruction of bridges on the Northern Central Railway, acting under orders from the public authorities.

Merryman, tall, handsome, and the owner of one of the best farms in Baltimore County, was a prominent citizen and president of the Maryland State Agricultural Society.[1] Friends

[1] Merryman was later Treasurer of Maryland and a member of the State Legislature.

rushed to his defense and that same Saturday a petition for writ of habeas corpus was prepared by attorneys George M. Gill and George H. Williams. It was sworn to before John Hanan, United States Commissioner, in Baltimore, and taken to Washington for presentation to Chief Justice Roger Brooke Taney of the Supreme Court.

Taney was 84 but mentally alert and vigorous. Born less than a year after the Declaration of Independence, his life was now closing in the midst of what Carl Sandburg calls the Second American Revolution. He was a member of an old and respected Southern Maryland family, but as a younger son he struck out on his own, practicing law in Frederick and later in Baltimore. He became Attorney General of Maryland, then Attorney General of the United States, and, during President Jackson's war on Mr. Biddle's Bank, Secretary of the Treasury. His first appointment to the Supreme Court failed of Senate confirmation, due to the enmities engendered by the Bank war, but he was reappointed and confirmed after the death of John Marshall, and assumed the difficult task of succeeding him as Chief Justice. Even in this exacting position, it was not long before his ability and judicial capacity won the admiration of earlier critics and detractors.

Taney was a tall, cavernous, Lincolnesque sort of man. He customarily dressed in black, and in earlier years of active practice at the bar, William Pinkney had said of him, " I can answer his argument, I am not afraid of his logic, but that infernal apostolic manner of his there is no replying to." [2] By now the apostolic manner had blended into the dignity of his judicial robes, and though he was bent with age, the strength and clarity of his mind made one forget the frailty of his physique. A few years before, Justice Benjamin R. Curtis of the Supreme Court had written his uncle, George Ticknor of Boston, that " Our aged Chief Justice grows more feeble in body, but retains his alacrity and force of mind wonderfully." [3]

As part of his judicial duties, Taney presided over the United States Circuit Court for the District of Maryland. He felt that

[2] John E. Semmes, *John H. B. Latrobe and His Times, 1803-1891* (Baltimore, 1917), p. 203.

[3] Benjamin R. Curtis, Jr., *A Memoir of Benjamin Robbins Curtis, LLD* (Boston, 1879), Vol. 1, p. 193.

the Merryman case could be handled there with greater convenience to all parties concerned and accordingly went to Baltimore for that purpose. On Sunday, May 26, acting as Chief Justice of the United States Supreme Court, he ordered that a writ of habeas corpus be issued. Thomas Spicer, Clerk of the Circuit Court issued the writ, and at 4 o'clock that afternoon deputy United States Marshal Vance served it on General Cadwalader at Fort McHenry. It directed the General to produce the body of John Merryman in the United States Circuit Court at 11 o'clock on Monday, May 27, and to show cause for his detention.

The stage for these events had been set by the secession of the South and by President Lincoln's call for troops to Washington. The only route over which they could be brought from the North by rail ran through Baltimore, where they had to change trains and cross town to the Camden Street station of the B. & O. On April 19, 1861, while making this transfer, the Sixth Massachusetts Infantry was attacked by a mob and in the ensuing melee 4 soldiers and 12 civilians were killed.[4]

These were the first killings of the Civil War and it is of interest to note that they occurred on the anniversary of the Battle of Lexington, which drew the first blood of the American Revolution.

Although requested, no advance notice of the arrival of the troops had been given to the Mayor or to the police. Accordingly, no escort was available when, about noon, the Massachusetts regiment pulled into the President Street station in southeast Baltimore and started across town in railroad cars drawn by horses. Nine cars crossed safely. Then a load of sand was dumped on the tracks. The gathering crowd, aided by Negroes from southern ships at the adjacent wharves, hauled heavy anchors into the way. The remaining cars were forced to turn back, and 220 Massachusetts infantrymen had to dismount and march on foot.

At this point someone produced a Confederate flag and paraded it ahead of the troops. They tried to avoid following it, and the flagbearers were attacked by Union sympathizers. This triggered a wild free-for-all, and soon cobblestones, bricks,

[4] It was this event that inspired James Ryder Randall, on April 23, 1861, to write "Maryland, My Maryland."

and bottles were hurtling through the air. Straggling soldiers were knocked down and their muskets snatched away. At least one was bayoneted with his own gun. Finally, they started to fire, the first civilian casualty being a young lawyer, Francis X. Ward. He survived, but others were less fortunate.

As usual, most of the casualties were bystanders. After the first onslaught, the soldiers were ordered to double time. This increased the mob's frenzy, just as dogs will attack more fiercely when a person flees. Also, the troops, while running, could not shoot effectively at the attackers in their rear, and so instead they poured a haphazard fire into the spectators clustered on sidewalks and street corners in front of them. One of those killed was a boy who had climbed onto a docked vessel for a better view.

The bloodshed would have been worse had not Mayor George William Brown come to the rescue from Camden Station, followed soon after by a detachment of police. The troops were brought to a walk, the police took up a position in their rear, and Mayor Brown marched beside the column, holding high an umbrella to identify himself and to protect the soldiers with his person.[5]

Although the troops were reunited at Camden Station, there was still one more casualty. Robert W. Davis, a prominent member of the firm of Paynter, Davis & Co., dry-goods dealers, had been inspecting some property on the outskirts of town when the trainload of soldiers passed him on its way towards Washington. He shook his fist at the train and was immediately shot and killed.[6]

That afternoon a mass meeting was called in Monument Square, attended by Governor Hicks, Mayor Brown, and leading citizens. A deputation was sent to President Lincoln to implore that no further troops be sent through Baltimore. As

[5] As a consequence of a later controversy with General Dix over pay to the City police, Mayor Brown was arrested and kept in military prison from September 17, 1861 until November 27, 1862. Ultimately he became Chief Judge of the Supreme Bench of Baltimore City.

[6] For detailed accounts of the riot, see: Matthew Page Andrews in *Baltimore, Its History and Its People*, edited by Clayton Colman Hall (N.Y.-Chicago, 1912), pp. 173-7; George William Brown, *Baltimore and the 19th of April, 1861* (Baltimore, 1887; Extra Volume III in Johns Hopkins Univ. Studies in Historical and Political Science). Charles B. Clark, "Baltimore and the Attack on the Sixth Massachusetts Regiment" *Md. Hist. Mag.*, LVI (Mar. 1961), 39-71.

a further precaution, it was determined to burn the railroad bridges connecting the City with the North, and an order to do so was issued.[7] It was the performance of this order that led to John Merryman's arrest.

Although President Lincoln received the Baltimore delegation and sought to temporize with their request, his real answer was in the following order dated April 27 to Winfield Scott, Commanding General of the Army:

> You are engaged in suppressing an insurrection against the laws of the United States. If at any point on or in the vicinity of any military line which is now or which shall be used between the city of Philadelphia and the city of Washington, you find resistance which renders it necessary to suspend the writ of habeas corpus, for the public safety, you personally or through the officer in command at the point at which the resistance occurs, are authorized to suspend the writ.[8]

The attack on its militia had infuriated Massachusetts, and on the night of May 13 Brigadier General Ben Butler of that State, acting without orders, and in darkness and rain, marched 1,000 men into Baltimore, fortified Federal Hill, and proclaimed himself master of the City. He also proclaimed it treasonable to send supplies to the seceding States, to display a Confederate flag, or to do anything else to give aid or comfort to the enemy. In Massachusetts, Butler was the hero of the hour and was promptly promoted to Major General. But the Union command took a dimmer view. On May 15, in the second day of his glory, he was ordered to "Issue no more Proclamations" and was transferred to Norfolk by a special wire from General Scott which said, "Your hazardous occupation was made without my knowledge, and of course without my approbation."[9] Butler's successor in Baltimore was General George Cadwalader, of Philadelphia.

[7] This order was issued by the Mayor and Police Commissioners of Baltimore with the concurrence of Governor Thomas Holiday Hicks. As to the latter's concurrence, sometimes denied, see George L. P. Radcliffe, *Governor Thomas Hicks of Maryland and the Civil War* (Baltimore, 1901; Johns Hopkins Univ. Studies, Series XIX, Nos. 11-12), pp. 560-1; George William Brown, *Baltimore and the 19th of April, 1861* (Baltimore, 1887), p. 58.

[8] The War of the Rebellion—Official Records (Washington, D. C. 1880-1901), Series I, II, 601-2.

[9] *Ibid.*, 28.

Local evidence of Yankee enterprise was not limited to Ben Butler, as shown by the following advertisement in the Baltimore newspapers:

INVALIDS AND OTHERS WHO ARE COMPELLED TO LEAVE BALTIMORE IN ITS PRESENT STATE OF ANARCHY, WILL FIND A PLEASANT AND PEACEFUL HOME FOR THE SUMMER AT DR. MONDE'S WATER-CURE ESTABLISHMENT AT FLORENCE, MASSACHUSETTS.[10]

On May 14, while still in command at Baltimore, General Butler had ordered the arrest of Ross Winans, a member of the House of Delegates, as he returned from a meeting of the State Assembly at Frederick. In addition to being a member of the Legislature, Winans was a prominent inventor and a man of great wealth, reputedly worth fifteen million dollars. No charges were placed against him, but he was held prisoner until he took an oath not to commit any act of hostility against the Government of the United States. Winans' imprisonment undoubtedly was a factor in the alacrity with which Taney came into the Merryman case.

While in Baltimore, the Chief Justice stayed at the home of his eldest daughter, Anne, and her husband, J. Mason Campbell, on Franklin Street. On the morning of Monday, May 27, leaning on the arm of his grandson, he entered the old Masonic Hall on St. Paul Street, where the United States Court was then held, and precisely at eleven took his place on the bench. Shortly thereafter an Aide-de-Camp in full military regalia, including red sash and sword, presented himself to the Court and tendered a written document. General Cadwalader, it said was holding Merryman on charges of treason and, acting under the authority of President Lincoln, had suspended the writ of habeas corpus.

This, said the Chief Justice, was something that neither the President nor General Cadwalader had authority to do under the Constitution. Accordingly, he directed the Clerk to issue a writ of attachment requiring General Cadwalader to appear in Court at noon the following day to show cause why he should not be held in contempt.

It was idle to think that General Cadwalader would appear

[10] The Sun, Baltimore, Md., May 25, 1861.

in Court on Tuesday, but there was speculation as to what he might do to Taney. On leaving his daughter's home next morning, the Chief Justice remarked that it was likely he should be imprisoned in Fort McHenry before night. This was not as fanciful as it may now appear. In the months ahead, the military were to arrest and imprison the Mayor, the Chief of Police, all four Police Commissioners, a member of Congress, thirty-one members of the Maryland Legislature, and many others, including several newspaper editors and at least two judges, Judge James L. Bartol of the Court of Appeals and Circuit Court Judge Richard Bennett Carmichael. The latter was arrested while conducting court at Easton and, when he refused to submit, was clubbed over the head with a revolver and forcibly dragged off the bench.[11]

When the Merryman case was called at noon on the 28th, the United States Marshal, Washington Bonifant, reported that he had gone to Fort McHenry to serve the writ of attachment and had been denied admittance. The Chief Justice remarked wryly that the Marshal had power to summon a *posse comitatus* to aid him in seizing General Cadwalader. But in this instance, said Taney, he excused him. The General's power of refusing obedience was notoriously superior to any the Marshal could command.[12] The Chief Justice then proceeded to hold the detention of Merryman unlawful upon two grounds:

First—That the President, under the Constitution of the United States, cannot suspend the privilege of the writ of habeas corpus, nor authorize a military officer to do it.

Second—A military officer has no right to arrest and detain a person not subject to the rules and articles of war for an offense against the laws of the United States, except in aid of the judicial authority and subject to its control.

To avoid any misunderstanding he said he would put his opinion in writing for delivery to the President. This he did on Friday, June 1, in language as ringing as any document in

[11] See Charles B. Clark, *Suppression and Control of Maryland, 1861-1865 Maryland Hist. Mag.*, Vol. 54, pp. 241-271 (September, 1959).

[12] General Cadwalader was a member of a distinguished Philadelphia family and a brother of Judge John Cadwalader of that City. Mr. Thomas F. Cadwalader, of Baltimore, a grandson of the latter, reports that it used to be said that "if Judge John had issued the writ, he would have damn well made his brother obey it."

the long Anglo-American struggle for individual liberty.[13] The keynote, perhaps, was when he said,

. . . if the authority which the Constitution has confided to the judiciary department and judicial officers may thus upon any pretext or under any circumstances be usurped by the military power at its discretion, the people of the United States are no longer living under a government of laws, but every citizen holds life, liberty, and property at the will and pleasure of the army officer in whose military district he may happen to be found.

After a civil war, the victors write the history books. The New Englanders who did so on this occasion were less than kind to the Chief Justice. In addition, the greatness of President Lincoln took some of the edge off Taney's strictures.

The Merryman case was a conflict between executive and judicial power. It was made the more dramatic by being a conflict between Taney and Lincoln. Unfortunately for Taney, people have come to feel that anyone who opposed Lincoln must have been wrong. In view of Lincoln's wisdom and self-restraint, history accords him latitude that could not be tolerated in a lesser man. But if the Constitution must depend upon the self-restraint of a single individual, what is there left?

Today, one hundred years later, most of us would agree with Professor William E. Mikell of the University of Pennsylvania Law School, when he said,

Taney's action in this case was worthy of the best traditions of the Anglo-Saxon judiciary. There is no sublimer picture in our history than this of the aged Chief Justice—the fires of Civil War kindling around him, . . . serene and unafraid, interposing the shield of the law in the defense of the liberty of the citizen. Chief Justice Coke, when the question was put to him by the King as to what he would do in a case where the King believed his prerogative concerned, made the answer which has become immortal, 'When the case happens, I shall do that which shall be fit for a judge to do.' Chief Justice Taney when presented with a case of presidential prerogative did that which was fit for a judge to do.[14]

[13] 17 Fed. Cases 144, No. 9487. The proceedings and opinion were separately printed by Lucas Brothers, Baltimore, in 1861, and are also included in an Appendix (pp. 640-659) to Samuel Tyler, *Memoir of Roger Brooke Taney, LLD* (Baltimore, 1872).

[14] William E. Mikell on Roger Brooke Taney in *Great American Lawyers* (Edited by William Draper Lewis, Philadelphia, 1908), Vol. 4, pp. 188-9.

Although charged with treason, Merryman was never brought to trial. He

MR. MARBURY'S REMARKS

It is something of a paradox that lawyers should gather today to be reminded of the proceedings in *Ex parte Merryman.* For it may fairly be said of that case that not since the rude Goth pulled the beard of the Roman senator has there been a more dramatic demonstration of the truth of the old maxim; *inter arma silent leges*; (freely rendered: " When the guns are firing, you cannot hear the lawyers talking.") Here in this court sat the highest judicial officer of the land. In the exercise of his clear constitutional authority he caused to be issued the most powerful and time-honored of all judicial mandates, the writ of *habeas corpus*—and his writ was ignored. In dignity, there was nothing left for him to do except to record his action for the judgment of posterity. Surely there is irony in the commemoration of such an exercise in futility.

True the occasion did have a different aspect. It took a bold heart to challenge the validity of President Lincoln's order authorizing the local military commander to suspend the writ of *habeas corpus.* Others who had challenged President Lincoln's actions had been placed under military arrest and confinement and Chief Justice Taney had reason to think that he might well suffer similar treatment. Since the decision in the *Dred Scott* case his name had been anathema to those who had placed Abraham Lincoln in the White House, and with war fevers rising and not unreasonable fears for the physical safety of the President reaching a point near hysteria, it took real courage to hand down the decision in *Ex parte Merryman.* This was especially true since that opinion gave not a little comfort to those who, like Colonel Charles Marshall, were undertaking to justify secession as the only way left to resist executive usurpation.

That President Lincoln felt able to ignore the order of the Chief Justice emphasizes its essential futility. Like the struggles of the heroes of Greek tragedy, which always aroused the pity and sympathy of the chorus but which just as invariably were completely unavailing to avert the fate to which the protagonists

is known to have had an interview with Secretary of War Cameron at Fort McHenry on July 4, 1861, and some time thereafter he was released. His next son, born December 5, 1864, was named Roger Brooke Taney Merryman, but died in infancy.

were predestined, so the proceedings in *Ex parte Merryman,* however much they may have aroused the sympathy of the community, were foredoomed to be ineffective. The President, like the gods on Olympus, could afford to treat the whole affair with indifference.

Why then do we think this a fitting occasion for ceremony? One answer is that it would be hard to find in the annals of this court any event more rich in historical interest. Indeed, *Ex parte Merryman* holds a very extraordinary fascination for the student of the Civil War era and especially for those who are interested in what happened here in Maryland during that period. But Mr. Lewis has already dealt with this aspect of the case, and I shall not attempt to gild the lily.

Is it because Taney's opinion established an important precedent in American constitutional law? That, I think, it would not be easy to demonstrate. This is hardly the occasion for an analysis of the decisions, beginning with *Ex parte Milligan,* which have explored this difficult terrain. All I shall say here is that after reading the utterances of those judges and legal scholars who have wrestled with this problem, I find it hard to escape the feeling that the answer to such questions lies more in the emotions than in any rational process. When justifiable fears for the national security are aroused, measures believed to be necessary for the protection of the State generally receive judicial sanction. We all remember the steps taken immediately after Pearl Harbor to relocate those residents of the Pacific Coast who were of Japanese descent. This " relocation " was, of course, nothing but detention in a concentration camp under military surveillance, of persons—many of them citizens of the United States—against whom no evidence of subversive action or of disloyal utterances had been brought forward. Yet this action received the highest judicial sanction in the *Korematsu* case.

Again, during World War II the military commander of the Hawaiian Islands, acting under authority of the Secretary of War, took certain security measures which he deemed necessary for the protection of the islands against subversion and possible invasion, including suspension of the writ of *habeas corpus.* The local District Judge, inspired no doubt by the example of Chief Justice Taney, undertook to challenge these measures.

I can testify from personal recollection to the reaction of that excellent lawyer and able judge, Robert P. Patterson, who was then Under-Secretary of War. Without a moment's hesitation Judge Patterson upheld the authority of the military commander and advised him to disregard the attempted intervention of the federal court.

Is there then any other justification for this gathering? I suggest that there is. Indeed, I believe that the role of Chief Justice Taney in *Ex parte Merryman* symbolizes the deepest aspirations of our times. All of us must surely entertain the hope that the rule of law will ultimately replace the use of naked power. I realize that this is beginning to be a shopworn phrase. On every hand committees arise dedicated to the idea that the rule of law furnishes the solution for all the troubles that presently vex the world, and Law Day has become a favorite occasion for every political orator to display his grasp of philosophical profundities—so that the ordinary man may be forgiven if he begins to suspect that this may be just another nostrum peddled by self-seeking adventurers.

I must also admit that to some the rule of law means little more than the fact that lawyers are somehow entitled to make money at the expense of laymen. This seems to be the view of those lawyers to whom the profession is a means of livelihood and nothing more. But I would venture to say that to every lawyer worthy of the name, the rule of law means something more profound than this. He may not understand it entirely and indeed if he tries to do so, he will speedily find himself wandering into the arena of juridical philosophy where the proponents of natural law contend with those who adhere to more pragmatic or positivist ideas. But just as the ordinary man may be confused by the debates of theologians and yet be moved by the examples of the saints, so the ordinary lawyer may lack competence in the field of jurisprudence and yet respond in his inmost being to a great act of faith such as the ruling of Chief Justice Taney in *Ex parte Merryman*.

For in the last analysis, it is Taney's faith in the rule of law which breathes through the opinion in that case. In proclaiming that faith under such adverse circumstances, he must have been aware that the rule of law is a goal toward which men strive in an imperfect world rather than a present reality.

Whether we accept with Cicero and Aquinas the idea that the law has always existed in a perfect state as a brooding omnipresence in the sky (to borrow Mr. Justice Holmes' vivid phrase) or whether we follow the anthropologists in thinking of the law as an evolving concept developing from primitive origins, we must all agree, I think, that it responds to one of man's deepest urges, his instinctive desire for justice.

Again the religious analogy presses strongly for attention. The struggle of man in a material world to attain the life of the spirit is very similar to his effort to bring about the rule of law. In both cases he has available to his needs a discipline which harnesses reason and the emotions to work together for the desired objective. But just as the ardent seeker after the religious life sometimes finds that our churches fall grievously short of their aim, so the true advocate of the rule of law frequently finds it hard to discover in our legal institutions all that is needful to bring about the desired result. Our courts like our temples sometimes need to be cleansed of the money changers, our judges like our high priests occasionally display human frailty, and our legal system like our ecclesiastical organizations periodically seems to need renovation.

Again, just as men find it difficult to accept in their daily lives the simple requisites for spiritual living, so do they appear to find it difficult to make those sacrifices without which the rule of law can never be a reality. When, for example, as recently happened, a committee of the Maryland Bar Association unanimously recommends that the United States decline to submit to judicial determination disputes arising under our treaties with Panama, one is irresistibly reminded of the rich young man in the gospel who went his way sorrowing. In both cases there is a lack of faith without which the goal cannot be achieved.

In justification it may be suggested that there has never been a time when it was harder to trust in the efficacy of the rule of law. Yet I believe that if we but look for them, we can find evidences that there is more basis for this trust than one would suppose from a reading of the daily papers. I hold in my hand an issue of the Journal of the International Commission of Jurists which contains what I believe to be one of the most significant documents of our times. It is the so-called Declaration of Delhi issued at New Delhi in January, 1959 by the

International Congress of Jurists. This Congress consisted of 185 judges, practicing lawyers, and teachers of law from 53 countries who met to discuss the rule of law and the administration of justice throughout the world. Among their number were judges of the highest courts, presidents of national bar associations, and other recognized leaders of the profession. This Congress agreed unanimously on a set of conclusions which in their view embodied the essentials of the rule of law. I wish that time permitted me to read every word of that declaration to you. It is a noble document breathing the spirit of what we in our somewhat parochial way tend to think of as Anglo-American justice. On point after point there is stated with clarity and force principles both substantive and procedural which if adhered to could not but lead to a world in which the decision of disputes by the exercise of naked power would be unthinkable.

Granted that the views of a few lawyer's do not necessarily control the conduct of governments, we can nevertheless say that here as in *Ex parte Merryman,* only on a far wider basis, embracing most of the leading nations of the world and many of the emerging states of Asia and Africa, is a ringing declaration which in our century has as much significance as the noble words of Sir Edward Coke read to you by Mr. Lewis or as Chief Justice Taney's great opinion in *Ex parte Merryman.* So long as we have brethren in all these lands who subscribe to this basic creed we need not say with Sir Edward Grey that the lights are going out all over the world. While they may flicker at times and even be temporarily extinguished here and there, they are still burning in more places and with a brighter flame than at any previous time in the history of mankind. And so we may still dare to hope that the time will yet come when the rule of law becomes something more than just the lawyer's dream.

RESPONSE OF JUDGE W. CALVIN CHESNUT

It was a happy thought by Chief Judge Thomsen to note the significance of Law Day by remembering one of the most important historical orders of this Court. Just one hundred years ago Chief Justice Taney, presiding in the United States Circuit Court for Maryland, signed a *habeas corpus* order

directed to General Cadwalader at Ft. McHenry to bring into court John Merryman, then held in custody. The Court is indebted today for the excellent and eloquent recounting of this proceeding by Mr. Lewis and Mr. William L. Marbury.

As Chief Justice of the Supreme Court of the United States, Taney frequently presided here in the Circuit Court, the whole jurisdiction of which in 1912 was transferred to the District Court, which, with the Supreme Court, have been the only federal courts continuous since 1789. The Circuit Court was situated in what was then called the new Masonic Temple on the east side of St. Paul Street just north of Fayette, where it had been housed since 1822. Of course, as we all know, that building no longer stands but has been superseded by the architecturally beautiful State Court House.

The occasion today furnishes a double opportunity for the members of the District Court. First, all of the present members of the Court wish to express their deep appreciation and respect for the judicial services of Roger Brooke Taney, the most illustrious member of this Court; and secondly, to make some present appropriate comment regarding the nature and function, past and present, of the great writ of *habeas corpus.*

Maryland has not been unmindful of the career of the great Chief Justice. Many years ago an interesting biography of him was published by Bernard C. Steiner, one time Librarian of the Enoch Pratt Free Library, and more recently a more extended and definitive biography has been published by Dr. Carl B. Swisher of the Johns Hopkins University. A statue of Taney by the sculptor Rinehart, showing a seated figure in judicial robe, occupies a prominent place in front of the State Capitol at Annapolis and a replica of the statue, even more familiar to Baltimoreans, faces the Washington Monument in Washington Square.

We are told that Severn Teackle Wallis in his address at the unveiling of the Annapolis statue, described it as " The figure has been treated by the artist in the spirit of that noble and absolute simplicity which is the type of the highest order of greatness."

It is quite impossible to overvalue the writ of *habeas corpus* enacted by the British Parliament in 1679, in consequence of an arbitrary and unlawful imprisonment by the King of a simple citizen. It has served its great purpose in the cause of

individual human liberty for nearly 300 years. Blackstone praised it as a second Magna Charta. The statute was in force in Maryland before the American Revolution and was given constitutional stature in the Federal Constitution of 1789 which provided that for federal law it should not be suspended except in time of rebellion or invasion. And by the 14th section of the first Judiciary Act of 1789 the power to issue it, in proper cases, was conferred upon federal judges. It is the most incisive legal surgical tool in the armory of the courts. Like many other most useful writs, it is of course capable of abuse, as we know in present common practice in this court, by irresponsible petitioners; but despite that, it should forever be retained as an indispensable feature of liberty.

On this occasion it is interesting to note that the use of the writ in the Merryman case was the forerunner in a few years, of two other famous *habeas corpus* cases in the Supreme Court, and it is a curious coincidence only of an alliterative nature, that the name of the petitioner in all three cases began with an "M," and that two of the three arose in Maryland and Mississippi respectively. One case, *Ex parte McCardle*, resulted in the temporary repeal of the right to appeal to the Supreme Court during the Reconstruction Period. The third case arising in Indiana, *Ex parte Milligan*, firmly established the doctrine of Taney's opinion in the Merryman case.

I may add a footnote to what has been so well said by Mr. Lewis about it. Shortly after I came to the Court in 1931 I was interested to personally examine many of the original court papers still then retained by the Clerk of this Court, including particularly the papers in the Merryman case. From that personal examination it is easy to visualize just what occurred. When Gen. Cadwalader's aide, in response to the writ which had been issued by Chief Justice Taney, was presented and the statement was made that Gen. Cadwalader refused on orders of President Lincoln to present Merryman, Taney reached for a readily accessible yellow pad and immediately, in his own handwriting, wrote the order holding Gen. Cadwalader in contempt for disobedience to the writ of the court. The penmanship was faltering, due to evident physical infirmity, but the wording was precise and positive.

We hope that these proceedings today will be duly transcribed and become one of the records of this Court.

SIDELIGHTS

JACOB ENGELBRECHT: COLLECTOR OF AUTOGRAPH LETTERS (1797-1878)

Edited by W. R. QUYNN

Jacob Engelbrecht was born in Frederick, Maryland in 1797. He was the son of Conrad Engelbrecht, a German soldier from Bayreuth, who was taken prisoner at Yorktown and brought to Frederick. There he spent the rest of his life, probably plying his trade as a tailor, which trade his sons apparently learned from him. The elder Engelbrecht married in Frederick a woman also of German descent, by name of Houx. There seems to have been no stigma attached to service with the so-called "Hessian Regiments," and young Jacob Engelbrecht grew up in Frederick as good an American and as proud of his young country as any descendant of one of Washington's soldiers. He went to both German and English schools and all his life kept up the use of German, making occasional German entries in his diary, but reading very little in that language. He heard German frequently on Sunday in the Lutheran Church in Frederick and probably spoke it with his parents and his friends of German descent. He was a prosperous tailor most of his life, although he deserted this trade for a time to become a storekeeper. He had all his life a keen interest in politics, local, state and national, being a strong anti-Federalist, then a Whig, finally a Republican. He held several city offices in Frederick, including a term as Mayor just after the end of the Civil War.

The fact that his father had served in a regiment sent to help the British may have made Jacob Engelbrecht even more outspoken in his patriotism. One of the manifestations of this feeling was his desire to collect autograph letters of the early Presidents and of the Signers of the Declaration of Independence. For some reason he does not mention this hobby in his Diary. Although an unknown young man, he did not hesitate to write to distinguished people. He showed his perseverance in the face of reluctance or refusals to answer on the part of his correspondents. We have no statements as to the number of letters Jacob Engelbrecht collected or tried to collect. Among the papers of some of the distinguished

men to whom he wrote are to be found original letters of request received by them from Engelbrecht and drafts of some of the letters they wrote in reply. Eight original letters to Engelbrecht from eminent men have survived and are in the possession of Mr. Jacob Engelbrecht, great-grand-son of the original Jacob, who has kindly permitted their publication.[1]

Engelbrecht made his first effort in the direction of Thomas Jefferson with a characteristic letter.

Frederick-Town Md 14th February 1824

Sir

The Subject of my letter will perhaps appear of rather an odd nature, but their [2] being persons of many difrent notions in the world, and mine being of a peculiar cast. I do hope you will favour me with my request.

I mearly wish a letter from you in your own hand writing, which I wish to frame after your death, which I wish to preserve in honour of you,—as to the Subject matter. it may be what ever you think proper. moral, Religious, or Political,

I hope Sir, you will favour me with the Little request, as it will be of Great pleasure, to me, and of very little trouble or inconveniance to you.—please let Space Sufficient at the margin to frame it,

Respectfully I. am. your
most Obet Humble Servt
Jacob Engelbrecht

The Honble Thos Jefferson.
Monticello Va

Mr. Jefferson replied very promptly, with the following very courteous letter.

Monticello Feb. 25. 24.

Sir

The kindness of the motive which led to the request of your letter of

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[1] I am greatly indebted also to the following: to Mr. L. H. Butterfield, Editor in Chief of The Adams Papers, for permission to summarize three letters in their collection; to Mr. Whitfield J. Bell, Associate Editor of The Papers of Benjamin Franklin; to Mr. Francis L. Berkeley Jr., Associate Librarian of the University of Virginia Alderman Library; to Mr. Donald O. Dewey, Assistant Editor of The Papers of James Madison for helpful suggestions concerning the publishing of letters; above all, to Miss Josephine Etchison, Librarian of the C. Burr Artz Library, Frederick, Md., where the Engelbrecht letters are on deposit. Miss Etchison's never-failing courtesy and cheerfulness have greatly facilitated my task. To the best of my knowledge, none of these letters has been published before.

[2] The original spelling and punctuation have been kept in all cases. *Sic* has been used only in cases where there might seem to be a typographical error. This letter is found in the Library of Congress, Manuscript Division, The Jefferson Papers, Engelbrecht to Jefferson, February 14, 1824.

the 14th inst. and which would give some value to an article from me, renders compliance a duty of gratitude. knowing nothing more moral. more sublime, more worthy of your preservation, than David's description of the good man in his 15th psalm I will here transcribe it, from Brady and Tate's version.[3]

Lord, who's the happy man that may To thy blest courts repair;
Not, stranger-like, to visit them. But to inhabit there?
'Tis he whose every thought and deed by rules of Virtue moves;
Whose generous tongue disdains to speak The thing his heart disproves.
Who never did a slander forge His neighbor's fame to wound;
Nor hearken to a false report. By malice whispered round.
Who vice, in all it's pomp and power, Can treat with just neglect;
And piety, tho' cloathed in rags, Religiously respect.
Who to his plighted vows and trust Has ever firmly stood;
And tho' he promise to his loss, He makes his promise good.
Whose soul in usury disdains His treasure to employ;
Whom no rewards can ever bribe The guiltless to destroy.
The man who by this steady course Has happiness ensured,
When earth's foundation shakes, shall stand by providence secured.

Accept this as a testimony of my respect for your request, an acknolegement [*sic*] of a due sense of the favor of your opinion, and an assurance of my good will and best wishes.

Th. Jefferson

For some reason or other, the collector does not seem to have thanked the great man immediately for his kindness. Later on in the year, Engelbrecht decided he would try his luck again and write to Mr. Jefferson, to ask if he had any letters with which he could part, from various other important people, as he put it, "the Hand writings of the Great and good, Washington, Hancock, Franklin and Thompson."[4] Perhaps Jefferson was not pleased at the reference to his "declining days" and forthcoming death. In any case, he does not seem to have answered the letter, for none of the items requested is to be found in the Engelbrecht collection, nor an answer to the request.

In the meantime, Engelbrecht had struck out in another direction, by writing to John Adams. This letter is very similar to the first one he wrote to Jefferson. He waited several months, then receiving no answer from Adams, he wrote again. This time he

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[3] Nahum Tate and N. Brady, *A New Version of the Psalms of David Fitted to the Times* . . . (London, 1711). The Library of Congress lists three other eighteenth century editions, two of them printed in Boston. The original manuscript of this letter is in the C. Burr Artz Library, Frederick, Md. The version in the Jefferson Papers in the Library of Congress is slightly different.

[4] Probably Charles Thomson (1729-1824) Secretary to the Continental Congress.

reminded the elderly statesman that "ere long it will be forever too late" and sent him a copy of the letter he had received from Jefferson. He also called to his attention that he, Jefferson and Carroll were the only surviving signers of the Declaration of Independence.

Despite the somewhat tactless reference to his forthcoming demise, Adams must have been touched by the evident earnestness of the young man and was moved perhaps by the example of his illustrious friend Jefferson. He replied within a week, showing why he had not written before, since his secretary had to write the letter, Adams being unable to do more than sign it.[5] He apologized for his inability to write, thanked him for the copy of Jefferson's letter and agreed with the latter in his praise of the Psalms, either in English prose translation or in the Tate and Brady version or in that of Steinhold and Hopkins.[6] He felt that the Psalms were superior to anything that the ancient world had to offer, mentioning Homer, Hesiod and what he called the "romances of Bacchus, in the Dyonisiacs and of Hercules in the Heracleid," by which he probably meant the body of mythology connected with these two. He must have had his tongue in his cheek when he quoted, as the best thing he could think of, the first four lines, in Latin, of Horace's ode on the just and steadfast man.[7] He admitted that it was pedantic to do so, calling the letter "the effusion of bewildered old age."[8]

Jacob Engelbrecht next apparently wrote to Charles Carroll of Carrolton, probably in August, 1824. Carroll replied with a letter which is modest in tone:

Doughoregan 1st Sepr 1824

Sir

In compliance with the request of your letter of the 30th past I answer it, lest my silence might be considered a disrespect. I have not leisure to write an essay on morality or politics, and if I had, mine would not be worth your perusal: if you derive amusement and instruction from essays on those important subjects I refer you to many in print much superior to any I can compose; such essays I wish the citizens of these States would frequently read and meditate seriously on the sound prin-

[5] This letter is found in original manuscript in the Artz Library.

[6] Thomas Sternhold, *Whole Book of Psalms collected into English meeter . . .* (London, 1641).

[7] *Odes*, III, 3, 1-4. The last line is incomplete.

[8] All three of the Adams-Engelbrecht letters are found in the Adams Microfilms, Manuscript Division, Library of Congress, and are summarized through the courtesy of the Adams Manuscript Trust, whose policy restricts publication in toto.

ciples and useful lessons they inculcate, to be convinced that morality founded on religion is the surest preservative of a free government, and especially to regulate their conduct by that conviction.

I return you my thanks for your benevolent wishes for my health prosperity & Immortality beyond the grave and remain with respect

Sir yr most hum. Servant
Charles Carroll of Carrollton [9]

His next letter was to Bushrod Washington, nephew of the first President and then a Judge of the Supreme Court. By this means he secured two autograph letters. The answer from Bushrod Washington was as follows:

Mount Vernon Jany 4, 1825

Sir

I have complied with so many requests similar to the one contained in your letter of the 27th ulto that it was only after a long Search that I was enabled to procure for you the enclosed which was addressed by the General to me the year before he died

I am Sir
yr mo. ob. Servt
Bush. Washington

The enclosed autograph letter, of George Washington to Bushrod Washington, is as follows:

Mount Vernon April 8th 1799

My dear Sir,

When you were here, on your return from Philadelphia, you said if I did not misunderstand you, that you were unable in all Philadelphia, to get a copy of the Federalist.—

In overhauling and [assorting] my Books Since, I found two sets,—one of which I make you a present of,—and Colo Ball affords a favourable opportunity of forwarding the Volume to you.—

How is the Election (to Congress) in your District likely to be terminated?—and what your prospects of Federal characters to the State Legislature?—Drop me a line on these subjects by the Post.

The family here is as well as usual and unite in best wishes for you, Mrs Washington & our friends at Bushfield [?] with

Your affecte Uncle
G Washington [10]

In his first letter to Madison, Engelbrecht backed up his request by noting that he had already received letters written by former

[9] The original manuscript is in the Artz Library, Frederick, Md.
[10] The two Washington letters are found in manuscript in the Artz Library.

presidents Washington, Adams and Jefferson. Because of a mistake made by Madison in his reply, the correspondence continued making a series of eight letters in all, four on each side.[11]

Madison took his time in replying, some six weeks, but he did reply.

Montpellier Ocr 20 1825

Dear Sir

Your letter of Sepr 5. was received several weeks ago but particuliar engagements have prevented an earlier attention to it. Tho the request it makes is a little singular, a compliance with it seems due to the motives which prompted it.

As your object is to preserve for public view. the letter you wish me to write, it ought to contain something worthy of such a purpose. To give it more of this character, than it might otherwise have I transcribe a page in the hand writing of Doctor Franklin, prefixed to a copy of John Bartrams Travels which was purchased many years ago in a bundle of pamphlets, and sold at auction, This little poetic effusion does not probably exist elsewhere; and it merits preservation, as well on account of its author, as of its moral improvement on the original ode.

'Given by the author to his Friend B Franklin
Horace. Ode 22. Lib. 1. Integer vitae. &c
Imitated

Whose life is upwright. innocent & harmless
Needs not O Bartram arm himself with weapons
Useless to him, the sword, the venomed shaft, or
murderous musket.

Thus when thou'rt journeying towards wild Onandago
O'er pathless mountains. Nature's Works exploring
or thro' vast Plains where rolls his mighty waters
Famed Mississippi;

Should the fierce She Bear. or the famished Wildcat,
Or yet more fierce & wild, the Savage Indian,
Meet thee, God praising, & his works adoring,
Instant they'd fly thee.

Tho' now to piercing frosts, now scorching Sunbeams,
Now to unwholesome Frogs, tho' thou'rt exposed,
Thy Guardian Angel, Innocence, shall keep thee
Safe from all Danger.'

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[11] Madison's mistake is explained in an interesting article by Whitfield J. Bell and Ralph L. Ketcham: "A Tribute to John Bartram, With a Note on Jacob Engelbrecht," in the *Pennsylvania Magazine of History and Biography* LXXXIII (1959), 446-51. Actually it was this article which put the present writer on the trail of Jacob Engelbrecht's manuscript collection.

The correspondence would normally have ended here, but a second letter shows why it was necessary to continue the exchange.

Montpellier June 20, 1827

Dear Sir

On a critical re-examination to which I was just led. of the appearances on which my letter of Oc[r] 20. 1825. ascribed the poetical effusion copied from a page in Bartrams pamphlet, to Doctor Franklin. I find that I may have committed an error in the case. by hastily applying the word "Given"—to the pamphlet when it was meant for the poetry, and by mistaking for the handwriting of the Doctor, what was only a remarkable likeness of it, You will be sensible that the least uncertainty on this point ought, for obvious reasons, to have the effect of cancelling my communication to you. I must ask the favour of you therefore to return me the paper containing it, on receiving which I will substitute some other communication answering the purpose of your original request. I need not add that that the propriety of guarding ag[st] contingences suggests that of the earliest answer from you.

With friendly respects [11]
James Madison

Englebrecht hastened to answer it on the day it was received:

Frederick town. Maryland. June 25[th] 1827.

Respected Sir,

your letter of the 20[th] Inst. came to hand this afternoon, and I hasten to comply with your request, wishing only to add, that, as our national anniversary is nearly at hand, I would most respectfully Suggest the propriety of writing your letter on that day, which would certainly add much to its Value,

Please accept the assurance
of my profound respect
and Esteem,
Jacob Engelbrecht

James Madison Esq[r]
Montpellier, V[a]

Receiving no answer, Jacob Engelbrecht wrote Madison again in October of the same year, reminding him of his promise:

Frederick town, Maryland Oct[r] 12[th] 1827.

Respected Sir,

On the 20[th] of June last, you favored me with a letter, Stating that in your letter to me, of the 20[th] of Oct[r] 1825. you had committed an error. which ought. for obvious reasons be corrected,—and you requested me to return you that letter, and on receiving which, you would Substitute Some other Communication, answering my original request,

On the reception of your letter, which was on the 25th of June, I Immediately complied with your request, which I hope, has come Safe to hand,

As more than three months have elapsed Since my letter, I would with due deference beg the fulfilment of your promise,

Please excuse my entreaty and believe me that your compliance will be duly appreciated

by your Obedient and very
Humble Servant,
Jacob Engelbrecht

James Madison Esqr
Montpellier
Va

This letter brought a prompt reply from Madison:

Montpellier Ocr 17. 1827

Dear Sir

I have duly recd your letter of the 12th instant, I had not forgotten my promise, and had made the provision for it now inclosed. But wishing to substitute for the abstract used, a little Apologue which I would have preferred, more delay has been occasioned by my unsuccessful endeavors to obtain it than I foresaw. That you may be no longer disappointed I forward what I had first prepared. Drop me a line that it has not miscarried

With friendly respects
James Madison [16]

The above letter brought enclosed with it the long-sought letter which Engelbrecht wanted so badly and which he was finally to have:

Montpellier July 4. 1827

Dear Sir

Though the request your letter makes be a little singular, a compliance with it seems due to the motive which prompted it, and a short auto graphic extract is accordingly subjoined

Charters

In Europe, charters of liberty have been granted by Power. America has set the example of Charters of power, granted by Liberty. This revolution in the practice of the world may, with an honest praise, be pronounced the most triumphant Epoch in its history, and the most consoling presage of its happiness. We look back already with astonishment at the daring outrages committed by despotism on the reason and the rights of man we look forward with joy to the period, when it shall be despoiled of all its usurpations, and bound forever in the chains with which it had loaded its miserable victims.

In proportion to the value of this revolution; in proportion to the importance of Instruments, every word of which decides a question [sic] power and liberty; in proportion to the Solemnity of Acts proclaiming the will, and authenticated by the Seal of the people, ought to be the vigilance with which they are guarded by every citizen in private life, and the circumspection with which they are executed by every citizen in public trust.

As compacts, charters of Government are superior in obligation to all others, because they give effect to all others; As trusts, none can be more sacred, because they are bound on the conscience by the religious sanctions of an oath; As metes and bournes of Government, they transcend all other landmarks, because every public usurpation [is an en]croachment on the private right, not of one, but of all.

The Citizens of the United States have peculiar motives to support the energy of Constitutional Charters.

Having originated the experiment, their merit will be estimated by its success.

Being Republicans. they must be anxious to establish the efficacy of popular Charters, in defending liberty against power, and power against licenciousnes and in keeping every portion of power within its proper limits

With friendly respects
James Madison [12]

Jacob Engelbrecht

The series ends with a flowery letter of thanks from Engelbrecht for Madison's last letter, dated July 4, 1827, but really written in October of that year.[13]

Engelbrecht contributed a collection of "autographs" to an exhibition of "relics" which was part of the celebration in Frederick of the one hundreth anniversary of the Declaration of Independence. The letters published here may have been on display.[14]

[12] Mr. Donald O. Dewey has kindly informed me that this is part of one of twenty or more essays which Madison wrote for Philip Freneau's *National Gazette* and that it appeared in the number of December 31, 1792.

[13] All eight of the Madison-Engelbrecht letters are found in the Madison Papers of the Manuscript Division of the Library of Congress. Three originals, June 20, July 4 and October 17, 1827 are on deposit in the Burr Artz Library in Frederick, Md.

[14] A pamphlet, *The Centennial Celebration, in Frederick County, Md., on June 28th, 1876* (Frederick, Md., 1879, p. 55), lists the contributions of "various parties" in the Exhibition. It is not clear whether all the "autographs" were letters. Some may have been signatures only. The pamphlet says that Engelbrecht contributed letters of John Hancock, Lewis Cass, Charles Sumner, Braxton Bragg, Henry Clay, Samuel Houston and Stephen A. Douglass. Curiously, this list does not include the writers of the letters published above. On the other hand, letters from four out of five of these persons are mentioned as contributed by "various parties," together with three others which did not

In his second letter to Jefferson, Engelbrecht wrote that his purpose in collecting letters was "to perpetuate the recolection of the Struggle for Independence, by viewing at a glance, as it were, the *Hand Writings* of those Patriots by whose valour, we now enjoy our happy Constitution." The one letter he received from Jefferson, he annotated as follows: "This letter I received . . . from the Hon. Thomas Jefferson . . . President of the United States from the 4th of March 1801 till the 4th of march 1809. I received it for the Express purpose of framing and preserving in honour of him. I therefore request posterity, whoever they may be, to preserve it 'inviolable' to its last vestige." On his letter from Charles Carroll he noted that "Neither of these letters [from Jefferson, Adams and Carroll] are to be Exposed or hung up, until after the death of Thomas Jefferson, John Adams, & Charles Carroll of Carrollton. I promised these Gentleman, that they should not be publickly exposed, I therefore enjoin it on him in whose hads [hands] they may be to pay strict attention to this particular." There is no sign that any of the letters was ever framed or given special care. However, posterity fulfilled his wishes, at least insofar as the above letters are concerned.

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figure in this article, Charles Thomson, John Jay and De Witt Clinton. It seems likely that Engelbrecht's collection formed the basis, if not the bulk, of the Centennial exhibit, but the description is far from clear.

REVIEWS OF RECENT BOOKS

A Survey of the Roads of the United States of America, 1789, by Christopher Colles. Edited by WALTER W. RISTOW. Cambridge: Harvard University Press, 1961. xii, 227. $7.50.

To students of American history, one of the most interesting publishing ventures in recent years has been the John Harvard Library Series of the Harvard University Press. This series, designed to " make significant books and documents from the American past available once more to scholars and the general public," has reprinted works ranging from Louisa Alcott's *Hospital Sketches* to Ignatius Donnelly's *Caesar's Column* to Charles Finney's *Lectures on Revivals of Religion.* The latest in the series, *A Survey of the Roads of the United States of America, 1789,* by Christopher Colles presents the first road guide published in this country. Little known because of the scarcity of available copies, the maps of the *Survey* are now reproduced for the first time accompanied by a detailed introduction about Colles and his work as well as bibliographies and indexes to facilitate use of the maps.

Christopher Colles, inventor, engineer, and perennial visionary, came to America from Dublin at the age of 32 in 1771 to begin a hard luck story that lasted until his death in 1816. The editor of this volume describes Colles as " one of those hapless individuals upon whom fate plays unkind tricks." Whether fate, the times, or the man was responsible, Colles' life was a succession of projects grandly conceived but seldom accomplished. His restless mind produced a contant flow of plans—for a public water supply for New York City, for an extensive inland canal system built of timber above ground, for a semaphoric telegraph network along the Atlantic and Gulf Coasts. These found little public support and brought no financial return during Colles' lifetime and it was only after his death that many of his projects were achieved by others.

It was probably cartographic experience during the Revolution that led Colles to conceive the plan of mapping the major roads of the United States. In 1789 he solicited subscriptions for his work and during the next two years published the 83 small maps that comprise the *Survey.* These maps, covering roads from Albany to Yorktown, are of the strip type familiar alike to medieval pilgrams

and modern AAA members. They appear on a page with no attempt at overall location save for a directional arrow, but an index map on the back cover which locates each strip in its proper place along the seaboard makes it possible for the modern reader to locate the strips easily. On the maps hachures gives some rough idea of the contour of the land immediately surrounding the roads; rivers, crossroads, towns, and ferries are shown and named; and symbols indicate mills, taverns, Episcopal and Presbyterian churches, and the "service stations of the 18th century," the blacksmith shops.

In his Introduction to the *Survey*, Walter W. Ristow, Assistant Chief of the Map Division at the Library of Congress, has not only written an exhaustive life of Colles but has discussed at length the way in which the *Survey* was put together. Colles himself had done some mapping in New York and New Jersey with the help of a perambulator, a machine that recorded the revolutions of a large wheel pushed along a road. The southern sections of the *Survey*, however, are shown by Mr. Ristow to have been based on the Erskine-DeWitt maps prepared for Washington's use during the Revolution and afterward deposited with the War Department where, apparently, Colles managed to get access to them for his own purposes. The way in which Colles changed the format of these maps to suit the needs of the *Survey* is one of the most interesting sections of the editor's analysis and description of the *Survey*.

Colles' *Survey* was not a success in its own time, but it has much to tell modern readers about the transportation and certain aspects of the social history of the United States in the post-Revolutionary period. This handsome edition with its careful editing, profuse illustrations, and clear facsimiles of the maps does more than justice to Colles' labors.

RHODA M. DORSEY

Goucher College

Indians in Pennsylvania. By PAUL A. W. WALLACE. Harrisburg: The Pennsylvania Historical and Museum Commission, 1961. xiii, 194. $1.50.

The Wallaces, *père et fils*, have made notable contributions to Pennsylvania ethno-history, and this compact volume by the senior Wallace is a synthesis of data from their separate writings augmented by additional material from both contemporary and modern sources.

The author recounts that in the 17th century four Indian peoples lived in Pennsylvania: the Delaware (Lenni Lenape), Susquehannock, Erie, and the Monongahela folk. A fifth, important in the state's history but living outside its bounds, were the Five Nation Iroquois. Each is separately discussed, with nine chapters devoted to the Delaware Indians, their physical appearance and dress, houses, occupations, travel, warfare, government, life cycle, religion, and amusements. There is also a chapter on the Indian refugees who settled temporarily in Pennsylvania: the Conoy and Nanticoke (from Maryland), Tuscarora and Tutelo (from the south), with a separate chapter on the Shawnee, the famed fighters of Pennsylvania's French and Indian Wars. Dr. Wallace believes the Shawnee probably originated in the Ohio Valley, and two separate movements brought them into Pennsylvania, one from the west and another via Cecil County, Maryland.

The book belongs in every school in the commonwealth; it is the first reliable account written specifically for the general reader which brings into perspective the part each tribe of Indians played, and treats accurately of their vastly different customs. An Appendix gives biographical sketches of 36 important Indians. There are a number of interesting and authentic sketches by William Rohrback, and seven maps illustrating Indian paths, refugee movements, land cessions, and Indian distribution in Pennsylvania from 1600 to 1774.

Other states, including Maryland, would profit if historians with Dr. Wallace's knowledge and sympathetic understanding of the Indians could be persuaded to undertake similar handbooks.

C. A. Weslager

Hockessin, Delaware

Alexander Hamilton's Pay Book. Edited by E. P. Panagopoulos. Detroit: Wayne State University Press, 1961. xii, 123. $3.

After his appointment in 1776 as Captain of the Artillery Company of New York Alexander Hamilton acquired a Company "Pay Book." Between then, apparently, and perhaps 1779, he entered on the blank pages thereof excerpts from various books he managed to read. While scholars have long known of the existence of the Pay Book in the Library of Congress, and have made use of it, Professor Panagopoulos here gives us a verbatim transcription (with some omissions; see p. 68), an account of its "origins and back-

ground," and an essay on the "philosophical premises of Hamilton's thought" to boot.

Professor Panagopoulos' emphasis on the importance of Malachy Postlethwayt's *Universal Dictionary of Trade and Commerce* as a source for some of Hamilton's economic data serves a useful purpose. So too does his recalling to our attention the earliness of Hamilton's concern with public questions. All such evidence will gladden those who may be inclined to dissent from Professor Adrienne Koch's recent caveat (in *Power, Morals, and the Founding Fathers*) to the effect that Hamilton's "all-consuming passion for power" exhausts the goads that drove him. Professor Panagopoulos' essay, on the other hand, provides somewhat less justification for calling Hamilton a philosopher than do Professor Koch's strenuous efforts over the years to fit that mantle on Jefferson.

STUART BRUCHEY

Michigan State University

The First South. By JOHN RICHARD ALDEN. Baton Rouge: Louisiana State University Press, 1961. vii, 144. $3.50.

In 1960 Professor John Richard Alden of Duke University delivered The Walter Lynwood Fleming Lectures in Southern History at Louisiana State University. He has presented them in *The First South* "substantially in the form they were given," the chapters of the book being as follows: I. "The First South"; II. "Sectional Struggles in the Continental Congress"; III. "The South and the Making of the Constitution"; IV. "The South Ratifies the Constitution" and V. "Aftermath."

The materials which the author used for the Lectures are neither new nor hitherto unknown. Instead, what he has sought to do and with success is to formulate "a new concept derived from examination of documents mostly available in print." The South dealt with here is older than the Old South, which met its demise in the Civil War. The First South—a term of convenience coined by the author—embraced the period from the outbreak of the American Revolution to the establishment of the Federal Government in 1789. "It appeared," notes Dr. Alden, "with the American nation; it was christened as early as 1778; and it clashed ever more sharply with a First North during and immediately after the War of Independence. This First South did not hasten under the Federal Roof with swift and certain steps, but haltingly and uncertainly."

Southern sectionalism and the regional apprehensions stemming from it were a reality in the years of our birth and infancy as an independent nation, as Professor Alden has made clear in this provocative monograph, which will attract both the general reader and the professional historian.

WILLIAM LLOYD FOX

Montgomery Junior College

The Right of Assembly and Association. By GLENN ABERNATHY. Columbia: University of South Carolina Press, 1961. vi, 263. $6.25.

In *The Right of Assembly and Association,* Dr. Abernathy has provided a readable, well-documented, comprehensive and balanced analysis of the significance of the rights of assembly and association, the problems which exercise of these rights may evoke, and the restraints which have been imposed upon them, in history and at the present time. Certainly no serious student in the area of civil rights should be without this book, for in addition to thoughtful analysis, the book contains a mine of information, presented compactly and understandably.

In a first chapter entitled " The Approach," Dr. Abernathy makes clear that although he accepts the necessity of restraint upon individual rights in the interest of society, " the danger is that an excess of restraint . . . may start an irreversible reaction away from the democratic form." (P. 6) An extremely limited application of censorship might be sufficient to cut off all expression of opposition political opinion. While normally it is possible to apply corrective measures if the society moves too far in the direction of removing restraints, there may be no feasible means of redressing the balance if society imposes too many restraints. The existence of mass communications media cannot be counted as a suitable replacement for assembly and association, for only a few speakers are interested simply in directing a particular message to as many listeners as possible; most want to " influence opinion, stimulate thought, incite to action, or spur the listener to affiliate himself with the speaker and try to gain other adherents to the cause." (P. 7) For these purposes, the meeting, with its exchange of ideas, its free flow of questions and answers, is best suited.

The next six chapters deal with the law governing the right of assembly. Dr. Abernathy moves from a discussion of the debate in the first Congress on the Bill of Rights to the principal Supreme

Court decisions dealing with restraints. Then in four chapters he outlines areas of restraint, proceeding from the most easily justified to the borderline cases, from restrictions upon unlawful assemblies to restrictions upon assemblies in the public streets, upon street parades and processions, and finally upon assemblies in the public parks. The concluding chapter dealing with the right of assembly is given over to the extent of federal protection of the right, with the assertion being made that the application of criminal sanctions to negligent or prejudiced officials is the area within which federal action is most likely to develop.

A similar treatment is given to the right of association. In his final paragraph, Dr. Abernathy states: "The right of assembly has long been considered to be merely an adjunct to the right of speech. With the increasing emphasis on the right of association as a cognate to the right of assembly, it appears that this least-discussed of the First Amendment rights is at last acquiring an independent status. Not only the historical evidence, . . . but also the findings of political scientists, psychologists, and sociologists, . . . give increased recognition to the vital role of assemblies and associations in society. It can be anticipated that the law as well will come to reflect this recognition." (P. 252)

There is a very useful list of selected references, an index of cases, and a subject index.

VALERIE A. EARLE

Georgetown University

Mississippi in the Confederacy. Edited by JOHN K. BETTERSWORTH and JAMES W. SILVER. Volume I, *As They Saw It*; Volume II, *As Seen in Retrospect.* Baton Rouge: Louisiana State University Press for the Mississippi Department of Archives and History, 1961. Pp. xxxii, 362; xx, 319. Illustrations, maps. $10.

Literary works are measured against many criteria; and one of these is unity—either thematic unity, unity of place, or unity of time. The authors Bettersworth and Silver have achieved unity of time in their volumes by sharply separating contemporary from post-war writings. The first volume has the value of immediacy, "written so close to the scene that there was no time-perspective to tidy them up, no aura of memory to prettify and romanticize the horrors. . . ." The second volume falls victim to these hazards, although the writing is more palatable. Disputations, cutely

humorous, and soggy sentimental writings are found interspersed in the second volume.

In regard to unity of place, both volumes have as their focal point the state of Mississippi. Yet, this leads the authors into problems, for how far did Mississippi extend—to the Tennessee border or to the tip of a Mississippi private's muzzle in Pennsylvania? The scope of the work is as uneven as the quality of the writing. Vicksburg receives its share of attention, Jones County receives far more than its share, and the campaigns of Mississippi's manhood in the Army of Tennessee, particularly, are subordinated. Unpleasant episodes, like that following the Vicksburg disaster, when the state and her people became a liability to the Confederacy, are virtually overlooked. Much of this is due to the emphasis that the authors give to economic and social conditions. Considerable attention is given to education, for instance.

As for thematic unity this work, like most anthologies, brings forth the old pattern of high hopes, tensions which prove irresistible, and final collapse and despair. The heroism and sacrifice of the people, however, ultimately rise above the chorus of bickering, boasting, and boredom.

Although many of the sources used are standard ones: *DeBows,* Russell, Olmstead, and Rowland's *Davis,* there are many manuscripts used. Bettersworth makes particularly good use of the long neglected Governor and General Pettus papers.

It is to be regretted that the set lacks both a bibliography and an index.

Perhaps other states will follow Mississippi's example in compiling such an anthology. They probably will learn, however, that interesting writing of quality is thin and that skillful, pruning state historians like Bettersworth in his *Confederate Mississippi* can produce works of greater unity and merit.

N. C. Hughes, Jr.

Bell Buckle, Tenn.

Virginia Railroads in the Civil War. By Angus James Johnston, II. Chapel Hill: Published for The Virginia Historical Society, by The University of North Carolina Press, 1961. xx, 294. $6.75.

The story of Virginia in the Civil War is one of unsurpassed valor and sacrifice; of high purpose and ultimate defeat. Situated on the frontier of the divided nation, the state became the major battleground of the war. The first Battle of Manassas was fought,

not too far from Washington, on July 21, 1861; and the Army of Northern Virginia surrendered at Appomattox Court House, not very far from Richmond, on April 9, 1865.

The Civil War was the first "railroad war" in history. And the Confederate Army, in Virginia, was the first to utilize the railroads for their own use, or to attempt to destroy those roads that might be used by the enemy. Thus we find Porterfield raiding the Baltimore & Ohio and the Northwestern Virginia Railroads in May 1861, and Jackson's raid on the Baltimore & Ohio at Harpers Ferry and Martinsburg in April 1861, at which time he not only destroyed the railroad, but carried off locomotives, cars, rail, machinery and other vital railroad equipment so badly needed in the agricultural South. Then, there was Johnston's use of the Manassas Gap Railroad to rush troops from the Shenandoah Valley to win a Confederate victory in the first Battle of Manassas.

The story of the southern railroads, during the war, is a sad one. Most of them were poorly constructed and all of them were lacking in adequate rolling stock. Virginia contained, within its borders, 1345 miles of track, or about 19% of the total southern mileage, including the B. & O. west of Harpers Ferry and the NW. Va. R. R. And, from the very beginning to the end of the war, the railroads of Virginia were used, captured, re-captured, destroyed and rebuilt many times, changing hands between North and South repeatedly.

Finally, crushed under the weight of superior manpower, arms and material resources, the South was defeated. But the little, inadequate railroads, inefficient as they were, hung on desperately to the last; as witness the seven train-loads of food and supplies for Lee's starving and ragged army, which were captured just before the surrender at Appomattox. And, ironically, this food was part of that which General Grant magnanimously gave to the defeated army after the surrender!

Despite their shortcomings, the railroads of Virginia did prolong Confederate resistance. And all of this fascinating story is told in Dr. Johnston's excellent book in a clear, readable style, supported by a wealth of authoritative references and historical data. Every Civil War and Railroad Buff will welcome this volume as a valuable addition to his library.

LAWRENCE W. SAGLE

B. & O. Railroad
Baltimore, Md.

James Monroe Smith: Georgia Planter, Before and After Death. By E. MERTON COULTER. Athens, Georgia: University of Georgia Press, 1961. ix, 294. $5.

E. Merton Coulter is more than just another "Southern Historian," he is also somewhat of an authority on Southern Agricultural History. Back in 1940 he brought out his interesting account of *Thomas Spalding of Sapelo,* which not only tells the life of Spalding, but also of a strong force in Georgia in favor of scientific and diversified farming. In his new book, *James Monroe Smith: Georgia Planter,* Dr. Coulter tells the story of a millionaire planter in Georgia around the turn of the twentieth century.

Even before the twentieth century began, Colonel Jim Smith had built for himself in northeast Georgia an agrarian empire, known as "Smithonia." His plantation or plantations were not measured in acres but in square miles. He built his own town, had his own churches, schools and medical facilities. Colonel Jim even built his own railroad lines, which connected with the major railways of the State. Not satisfied with being the greatest planter of his day, he made his plantations as self-sufficient as possible. Among his many economic interests, Smith made his own bricks, produced his own cottonseed oil, manufactured fertilizers, and operated his own gin mills. In order to carry out such operations, Colonel Smith had to have a labor force of over a thousand hands. This labor force was often as varied as his industries; including hired laborers, tenants, and state and local convicts.

Needless to say that a man in the Colonel's position was a political power in his region, and that Colonel Smith served in the State Legislature. He also unsuccessfully sought the governor's chair in 1906.

For one interested in the post-Civil War development of the South, and especially agriculture, Dr. Coulter's book is recommended. However, there seem to be two shortcomings: First, the story could have been shortened. Much research has gone into this work but it was not necessary to the story to include facts to the point that there is often repetition. Second, James Monroe Smith does not come to life. This is probably not so much the fault of the author or his style of writing, but that Colonel Smith, the bachelor-king of Smithonia, peronally was not as colorful or significant as the material wealth he created.

WILLIAM H. WROTEN, JR.

State Teachers College
Salisbury, Md.

A Catalogue of Portraits and Other Works of Art in the Possession of the American Philosophical Society. By ANNA WELLS RUTLEDGE, CHARLES COLEMAN SELLERS, and the Staff of the Society. Philadelphia: American Philosophical Society, 1961. viii, 173. $2.50.

The American Philosophical Society by publishing a catalogue of its pictures has further honored those for whom it has in the past, by commissioning their likenesses or accepting them as gifts, shown its admiration. Of the one hundred and ninety-two entries in the catalogue, virtually all are portraits; and, except for twelve of these, all are of members of the Society, largely Philadelphians. Benjamin Franklin, its founder is portrayed in various media no less than thirty-five times, and four times in the fifty-nine reproductions, conspicuously in the sole color plate which serves as frontispiece to the Catalogue. Most outstanding as works of art, however, are Houdon's busts of Condorcet and of Turgot and Sully's paintings of Joel Roberts Poinsett and of Thomas Jefferson in his old age. The concise and interesting descriptions of the works of art and their subjects are based on research by Anna Wells Rutledge who catalogued the portraits in the Maryland Historical Society.

The Philosophical Society's catalogue is not Philadelphia's first literary proof of pride in its past leaders. The University of Pennsylvania in 1940 published a well illustrated description of its larger collection of paintings, mainly of distinguished scholars. Two years later the Pennsylvania Historical Society listed its six hundred and fifteen oil paintings, principally portraits, in a now scarce quarto with sixty plates. The Maryland Historical Society with over five hundred and fifty portraits should undertake a similar publication. By doing so, it would, as Philadelphia has thrice done, accord recognition to eminent citizens of the past, and would inspire in the present and future what no community can live without—and what is sorely needed here—disinterested public leadership.

DOUGLAS GORDON

Baltimore, Md.

Pen Pictures of Early Western Pennsylvania. Edited by JOHN W. HARPSTER. Pittsburgh: The University of Pittsburgh Press, 1961. 337. $5.

"Pen Pictures" are excerpts from Journals, Diaries, Narratives, Letters, Autobiographies etc. embracing thirty-six authors, commencing with Conrad Weiser, 1748, and culminating with the notes of over two hundred authors whose journals and notes have found their ways through the years into (1) Pennsylvania Colonial Records (16 Vols.) (2) Pennsylvania Archives, First Series 12 Vols. Second Series, first edition 19 Vols. Sixth Series 15 Vols. (3) Early Western Travels 32 Vols. by Reuben G. Thwaites.

The thirty-six excerpts were selected to reveal significant detail to the struggle between the British, Indians, settlers, traders, and the French; also descriptions of travel over primitive mountain roads, and the waterways. There are descriptions of early commerce, the itinerant preacher, frontier life, and the migration westward. The excerpts also provide interesting detail about the taverns along the main routes.

At the conclusion is listed the "Selective Bibliography of Travel and Description in Western Pennsylvania, 1748-1830." There is also an index. Much of this material should be interesting to Marylanders as the routing from the Atlantic coast across the mountains included the Braddock Road, later known as the National Pike (now Rt. 40) through Maryland.

"Pen Pictures" is one of a growing series of scholarly and useful books republished by the University of Pittsburgh Press, Mrs. Agnes Starrett, Editor. This series has been made possible through the Buhl Foundation of Pittsburgh.

FELIX G. ROBINSON

Oakland, Md.

The Keelboat Age on Western Waters. By LELAND D. BALDWIN. Pittsburgh: The University of Pittsburgh Press, 1941; 1961. 268. $5.

This is a reprint replete with the authentic folklore of the Upper Ohio River and its environs. It is also a technical description of the evolution of water transportation on the Ohio and Mississippi River systems from the primitive Indian bull boat to the modern diesel tugs that push coal and oil in a string of barges.

Of the many craft evolved for the transportation of man and his

goods Prof. Baldwin dwells upon the competence of the Keelboat that was used even after the arrival of the steamboat, especially in the more shallow streams. It was a light, graceful, very maneuverable boat invented by an Amishman.

Other information to be gleaned from this excellent book deals with shipbuilding of various types, including steamboats, on the Monongahela, Youghiogheny, and Ohio Rivers. There is a chapter on the River Pirates and the Natchez Trace, and one on the Art of Navigation that reminds one of Mark Twain's description of this business in "Life On The Mississippi."

FELIX G. ROBINSON

Oakland, Md.

BOOKS RECEIVED

Follow the Water. By VARLEY LONG. John F. Blair; Winston-Salem, N. C. 1961. 222. $4.50.

Indians in Pennsylvania. By PAUL A. W. WALLACE. Harrisburg; The Pennsylvania Historical and Museum Commission, 1961. xiii, 194. $1.50.

Virginia Railroads in the Civil War. By ANGUS JAMES JOHNSTON II. Chapel Hill; Published for The Virginia Historical Society by The University of North Carolina Press, 1961. xiv, 336. $6.

A Virginia Yankee in the Civil War: The Diaries of David Hunter Strother. Edited by CECIL D. EBY, JR. Chapel Hill; The University of North Carolina Press, 1961. xx, 294. $6.75.

Daniel Morgan Revolutionary Rifleman. By DON HIGGINBOTHAM. Chapel Hill; The University of North Carolina Press, 1961. ix, 239. $6. (Published for the Institute of Early American History and Culture at Williamsburg)

From Shiloh to San Juan: The Life of "Fightin' Joe" Wheeler. By JOHN P. DYER. Baton Rouge; Louisiana State University Press, 1961. vii, 275. $5.

George Washington's Mother. By ALICE CURTIS DESMOND. New York; Dodd Mead & Co., 1961. xii, 235. $3.50.

The Letters of Stephen A. Douglas. Edited by ROBERT W. JOHANNSEN. Urbana, Ill.; The University of Illinois Press, 1961. xxxi, 558. $10.

The Virginia Bishop. A Yankee Hero of the Confederacy. By JOHN SUMNER WOOD. Richmond; Garrett & Massie, Inc. 1961. xiii, 187. $3.50.

America's Polish Heritage: A Social History of the Poles in America. By JOSEPH A. WYTRWAL. Detroit; Endurance Press, 1961. xxxi, 350. $6.50.

Letters of a Civil War Surgeon. Edited by PAUL FATOUT. West Lafayette, Indiana; Purdue University Studies, 1961. 110. $2.25.

Full Many A Name. The Story of Sam Davis. By MABEL GOODE FRANTZ. Jackson, Tenn.; Confederate House, Publishers. 1961. 143. $3.95.

The Poems of Charles Hansford. Edited by JAMES A. SERVIES and CARL R. DOLMETSCH. (Virginia Historical Society Documents, Vol. I) Chapel Hill; Published for The Virginia Historical Society by The University of North Carolina Press, 1961. xiv, 95. $5.

Four Years in the Confederate Artillery. The Diary of Private Henry Robinson Berkeley. Edited by WILLIAM H. RUNGE. (Virginia Historical Society Documents, Vol. II) Chapel Hill; Published for The Virginia Historical Society by The University of North Carolina Press, 1961. xxv, 156. $4.

NOTES AND QUERIES

The Jesuit Missions of St. Mary's Co.—In the review in the June issue of this magazine of Edwin Beitzell's book, *The Jesuit Missions of St. Mary's County, Maryland,* it was unfortunately stated that Jesuit churches and schools were *confiscated* during the Protestant revolt in 1689. It should be noted that Mr. Beitzell carefully avoided the use of the word italicized above, but stated that the schools and churches were "closed." He made it clear that the attempt at confiscation was defeated in the Assembly. He recorded that as fact because of his pride in the proven toleration of the Maryland Assembly and of Maryland inhabitants. He showed that toleration was a very deeply imbedded principle in Maryland at that time.

J. WEBSTER JONES
Philadelphia, Pa.

Gen. Lee's Sword—The sword which General Robert E. Lee wore at Appomatox, during the surrender, is said to have been presented to him by a citizen of Maryland. On one side of the blade are the words: "General Robert E. Lee, from a Marylander, 1863"; on the other side: "*Aide toi et Dieu t'aidera.*" Has any reader information which would identify the Marylander who presented General Lee with this sword?

FRANK P. CAUBLE, Research Historian
Appomattox Court House National Historical Park
5905 Hines Circle, Lynchburg, Va.

Matthias Harris of Kent Co.—The undersigned seeks information on the birth dates of the children of Mathias Harris (ca. 1716-1773), son of James and Augustina Vanderhayden Harris of Kent Co., who married (1) Miss Williamson of Calvert Co. by whom he had two daughters, both said to have married Andersons; and (2) Hester Bailey by whom he is said to have had at least five children: James B., Jonathan B., William, Hester (m. Dr. Ridgely),

and another daughter, m. Mr. Carter of Kent Island. Matthias Harris was a member of Maryland Assembly and later an Anglican clergyman serving various parishes on the Eastern Shore.

RALPH L. KETCHAM
The Papers of Benjamin Franklin
Yale University Library
Box 1603 A Yale Station, New Haven, Conn.

Syracuse University MS. Additions—Syracuse University has recently added the following collection of manuscripts, housed in its Carnegie Library: "Onondaga Years" prepared by the Rev. W. Carleton Stevens; letters of the Rev. Wilson G. Cole; the Rev. Byron D. Showers, 1917-1919; the corporate papers of the Unadilla Valley Railway Company; and the papers of the nineteenth century Japanese diplomat, Joseph Heco.

Lewis—I would like to contact anyone with information of Capt. Thomas Lewis, married to Judith Ferguson 1766, Fairfax Co. I want early data of father and grandfather in Prince George's Co., Md.

MRS. ALBERT VIDAL
1026 S. W. 2nd Ave., Gainesville, Fla.

Rogers—I am seeking information on James L. Rogers, who was married to Elizabeth Susan Gould, daughter of Alexander Gould, Sr. James L. Rogers was reputed to have been related to Edgar Allan Poe. I would also like to hear from any descendents of Alexander Gould, Sr.

L. R. COLBURN
106 Heather Lane, Delray Beach, Fla.

Bolling—A genealogy of this family is in the course of preparation. Information is desired regarding all descendants of Robert Bolling (1646-1709), the immigrant of 1660 to Virginia, by marriages to both (1) Jane Rolfe (granddaughter of Pocahontas) and (2) Anne Stith.

COLIN JAMES
636 Gaylord St., Denver 6, Colo.

Rion—I want the ancestor of Jane Rion (Jennie Rhine). She married Jacob Moler of Harper's Ferry, who died 1804. She died 1826. Their children were: John Darby, Charles, Adam, Henry, Nellie Anna, Jacob, Ellen, Lydia, Elizabeth, and probably others; all born at Harper's Ferry, Va. (now W. Va.). Have data to exchange.

Pancoast—$20.00 reward for first person to submit proof of the names of William Harding Pancoast's parents, birthplace and dates. He was born in Maryland in 1793 and died in Knox Co. Ohio, in 1826. He married 1815 Lydia Barnett Noler of Harper's Ferry and had: Jacob Manuel, b. 1818, Savage Mts., Md., m. Charity Cray, 1843, Ohio; Miranda, b. ?, m. Joseph Musgrove, and had Harrison and Carlotta, res. Chicago, Ill.; Mary Ann, b. 1822, m. Mr. Gould, res, Pa.; Angelina, b. 1824, d. 1890, m. ?; John L., b. 1826, in Knox Co., O., m. Caroline Howe, res. Hastings, Mich.; Wm. H. Pancoast's parents were born Quakers, disowned because of Revolutionary War service. He became a "New Light" preacher (Baptist). Have data to exchange.

GERTRUDE CROOK DEAN
Magnolia, Texas

Jamestown Foundation Award—A $500 research award is being offered for the best historical information about John Rolfe, his appearance and mannerisms. Entries should be sent to

JAMESTOWN FOUNDATION
P. O. Box 1835, Williamsburg, Va.

CONTRIBUTORS

DR. WALTER MUIR WHITEHILL, Director and Librarian of the Boston Athenaeum, is presently serving as Director of Study on a project undertaken by the Independent Historical Societies, an organization formed for the purpose of studying their research and publication functions and financial future.

MRS. SOPHIE H. DRINKER is the author of *Hannah Penn and the Proprietorship of Pennsylvania,* and has just completed, as co-compiler, a bibliography on colonial women, to be published by the University of Pennsylvania Press. Mrs. Drinker is president of the National Society of the Colonial Dames of America in Pennsylvania.

Descended from a family, long resident in Frederick County, Md., DR. WILLIAM R. QUYNN is a professor of foreign languages at the University of Maryland, College Park. He is the author of studies in the field of French literature and holds the French decoration of Officier d'Académie. He has published several articles on Maryland local history and is at present preparing an edition of the "Diary of Jacob Engelbrecht."

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Names of authors and titles of pages and original documents printed in the *Magazine* are set in capitals. Titles of books reviewed or cited are set in italics.